

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
) CR-18-00258-EJD
 PLAINTIFF,)
) SAN JOSE, CALIFORNIA
 VS.)
) APRIL 1, 2022
 RAMESH "SUNNY" BALWANI,)
) VOLUME 12
 DEFENDANT.)
) PAGES 1683 - 1905

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: JOHN C. BOSTIC
JEFFREY B. SCHENK
150 ALMADEN BOULEVARD, SUITE 900
SAN JOSE, CALIFORNIA 95113

BY: ROBERT S. LEACH
KELLY VOLKAR
1301 CLAY STREET, SUITE 340S
OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER:
IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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SAN JOSE, CALIFORNIA

APRIL 1, 2022

P R O C E E D I N G S

(COURT CONVENED AT 8:33 A.M.)

(JURY OUT AT 8:33 A.M.)

THE COURT: WE ARE ON THE RECORD. ALL COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.

WE'RE OUTSIDE OF THE PRESENCE OF THE JURY.

LET'S SEE. LAST NIGHT AT ABOUT 4:30 P.M. DOCUMENT 1384 WAS FILED, MOTION TO STRIKE IMPROPER EXPERT TESTIMONY, AND OTHER PROHIBITED TESTIMONY BY THE DEFENSE.

I CHECKED THE ECF DOCKET THIS MORNING. I DON'T THINK THE GOVERNMENT HAS FILED ANYTHING.

MR. BOSTIC?

MR. BOSTIC: NO, YOUR HONOR. BUT WE'RE PREPARED TO ADDRESS IT ORALLY.

THE COURT: WELL, I'VE READ THIS.

DOES THE GOVERNMENT HAVE A RESPONSE TO THIS?

MR. BOSTIC: YES, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU.

MR. BOSTIC: SO, YOUR HONOR, THE GOVERNMENT OPPOSES THE DEFENSE MOTION TO STRIKE PORTIONS OF THE TESTIMONY OF DR. PANDORI AND MS. CHEUNG.

THE SECTIONS OF TESTIMONY IDENTIFIED BY THE DEFENSE ARE NOT EXPERT TESTIMONY. THEY ARE THE TESTIMONY OF PERCIPIENT WITNESSES WHO WORKED AT THERANOS. THEY ADDRESS THE

08:34AM 1 OBSERVATIONS OF THOSE WITNESSES IN TERMS OF HOW THE THERANOS
08:34AM 2 TECHNOLOGY WORKED AND MORE PARTICULARLY WHETHER THE THERANOS
08:34AM 3 TECHNOLOGY WORKED, AND IN THAT VEIN THESE WITNESSES HAVE
08:34AM 4 FIRSTHAND PERCIPIENT EXPERIENCE WHICH THEY ARE ABLE TO RELATE
08:34AM 5 TO THE JURY WITHOUT VEERING INTO THE REALM OF EXPERT TESTIMONY.

08:34AM 6 WHEN A WITNESS WHO WORKED WITH THESE DEVICES TESTIFIES
08:35AM 7 THAT THERE WERE RELIABILITY PROBLEMS, THAT THERE WERE ACCURACY
08:35AM 8 CONCERNS, THEY WERE REPORTING WHAT THEY SAW, WHEN THEY DESCRIBE
08:35AM 9 THEIR OWN CONCERNS AND WHY THEY WERE WORRIED ABOUT THE ACCURACY
08:35AM 10 OF THESE DEVICES, THAT'S RELEVANT NOT ONLY TO PUT THEIR
08:35AM 11 OBSERVATIONS IN CONTEXT, BUT ALSO BECAUSE IT'S THOSE CONCERNS
08:35AM 12 THAT MOTIVATED THEM TO ULTIMATELY RAISE THESE ISSUES WITH
08:35AM 13 OTHERS AT THE COMPANY, INCLUDING THE DEFENDANT HIMSELF, AND
08:35AM 14 THEN ULTIMATELY TO LEAVE THEIR EMPLOYMENT WITH THE COMPANY.

08:35AM 15 SO I'M HAPPY TO ADDRESS SPECIFIC INSTANCES THAT THE COURT
08:35AM 16 MIGHT HAVE QUESTIONS ON OR RESPOND TO ANY QUESTIONS THAT THE
08:35AM 17 COURT MIGHT HAVE, BUT OUR OVERALL POSITION IS THAT THESE
08:35AM 18 WITNESSES STAYED WITHIN THE BOUNDS OF LAY TESTIMONY AND ADHERED
08:35AM 19 TO THE GUIDANCE PREVIOUSLY ISSUED BY THE COURT IN CONNECTION
08:35AM 20 WITH PRETRIAL BRIEFING.

08:35AM 21 THE COURT: ALL RIGHT. WELL, THANK YOU.

08:35AM 22 I WONDER IF YOU COULD COMMENT ON PAGE 3 OF THE MOTION,
08:36AM 23 ECF PAGE 5 AT ABOUT LINE 13, I THINK, IT LOOKS LIKE IT, 13, IT
08:36AM 24 CITES THE TRANSCRIPT 1137 TO 1138. THERE WAS AN OBJECTION
08:36AM 25 THERE. I THINK IT WAS BASED ON 602 BY MR. COOPERSMITH.

08:36AM 1 AND THE COURT THEN ALLOWED THE TESTIMONY TO OCCUR, AND
08:36AM 2 THEN THERE WAS A 702 OBJECTION AS I RECALL.

08:36AM 3 SO THE 602 OBJECTION WAS OBVIOUSLY BASED ON KNOWLEDGE,
08:36AM 4 PERSONAL KNOWLEDGE. MY SENSE IS THAT THAT IS WHAT THAT
08:36AM 5 COLLOQUY WAS REFERENCING, THE KNOWLEDGE, THE OBSERVATIONS AS
08:36AM 6 YOU JUST MENTIONED.

08:36AM 7 AND I BELIEVE THAT COLLOQUY WAS REGARDING WHAT THOSE
08:36AM 8 MACHINES COULD DO, WHAT THE ELISA, WAS IT THE ELISA MACHINES OR
08:36AM 9 THE EDISON MACHINES, WHAT THEY COULD RUN.

08:37AM 10 AND WHEN I LOOK AT THAT TESTIMONY AND RECALLING THE
08:37AM 11 COLLOQUY, THAT REALLY WAS A QUESTION ABOUT, AND YOU'LL PARDON
08:37AM 12 ME FOR PUTTING IT IN A DIFFERENT VISUAL VEIN, BUT I HOPE IT
08:37AM 13 CAPTURES THE SENTIMENT OF THAT EXAMINATION.

08:37AM 14 IT SEEMED TO ME THE QUESTIONS WERE: THIS IS A TOASTER,
08:37AM 15 AND CAN YOU TOASTER RYE BREAD IN THIS TOASTER? CAN YOU TOAST
08:37AM 16 WHEAT BREAD THEN TOASTER? CAN YOU TOAST FRENCH BREAD IN THIS
08:37AM 17 TOASTER?

08:37AM 18 AND THEN THE NEXT QUESTION WOULD BE CAN YOU POACH AN EGG
08:37AM 19 IN THIS TOASTER? CAN YOU MAKE SPAGHETTI IN THIS TOASTER?

08:37AM 20 AND IT SEEMED TO ME THAT THAT'S WHAT THAT QUESTIONING WAS
08:37AM 21 OF MS. CHEUNG, WHAT CAN YOU DO IN THESE MACHINES? AND THAT, IT
08:37AM 22 SEEMED TO ME, DIDN'T REQUIRE EXPERTISE TO TALK ABOUT WHAT COULD
08:38AM 23 BE RUN IN THAT PARTICULAR MACHINE. THAT'S WHAT SHE WAS TRAINED
08:38AM 24 TO DO.

08:38AM 25 THAT'S JUST ONE EXAMPLE.

08:38AM 1 ON THE SAME PAGE THERE WAS OBJECTIONS ABOUT WAS THIS
08:38AM 2 GROUNDBREAKING TECHNOLOGY, AND I THINK THERE WAS AN OBJECTION
08:38AM 3 TO THAT AT LEAST RAISED IN THE PLEADINGS.

08:38AM 4 AND THE QUESTION WAS NOT BASED NECESSARILY ON EXPERTISE,
08:38AM 5 BUT I BELIEVE DR. PANDORI TESTIFIED GROUND BREAKING IN THE
08:38AM 6 CONTEXT OF THE LITERATURE THAT WAS PUBLIC THROUGH THE COMPANY,
08:38AM 7 THE COMPANY REPRESENTATIONS, OR AT LEAST LITERATURE THAT HE,
08:38AM 8 DR. PANDORI, HAD READ REGARDING REPRESENTATIONS. AND IN THAT
08:38AM 9 VEIN THE TECHNOLOGY WAS NOT GROUND BREAKING TO HIM. I DON'T
08:38AM 10 BELIEVE THAT REQUIRED EXPERTISE.

08:38AM 11 LATER ON IN THAT SAME PAGE AT LINE 24, 25, THERE WERE
08:39AM 12 NOTES OF -- TESTIMONY OF 1610 REGARDING FAMILIARITY WITH THE
08:39AM 13 LITERATURE, ET CETERA. THERE WAS NO OBJECTION ACTUALLY TO ANY
08:39AM 14 OF THAT TESTIMONY.

08:39AM 15 THERE WAS CONVERSATIONS AT 1657 REGARDING RAW DATA, AND
08:39AM 16 THE CONTEXT OF THAT CONVERSATION WAS REALLY IN RESPONSE TO AN
08:39AM 17 EMAIL, AS I RECALL THE TESTIMONY, FROM MR. BALWANI ASKING FOR
08:39AM 18 THE RAW DATA. I THINK THE EMAIL SAID I WANT TO SEE THE RAW
08:39AM 19 DATA.

08:39AM 20 AND I BELIEVE YOUR QUESTIONS WERE REGARDING WHAT WOULD --
08:39AM 21 IN ESSENCE, WHAT WOULD SOMEONE NEED TO HAVE KNOWLEDGE OF TO DO
08:39AM 22 SOMETHING WITH THE RAW DATA. AND THE WITNESS TESTIFIED, WELL,
08:39AM 23 YOU WOULD HAVE TO HAVE SOME MEDICAL BACKGROUND OR SOMETHING.

08:39AM 24 AND THEN ULTIMATELY THE WITNESS SAID, WELL, YOU KNOW,
08:40AM 25 PERHAPS HE WAS GOING TO HAVE SOMEBODY LOOK AT IT SO THERE'S A

08:40AM 1 COMPLETELY INNOCENT REASON FOR HIS REQUEST. I WANT IT. MAYBE
08:40AM 2 HE PERSONALLY COULDN'T DO IT BECAUSE HE DIDN'T HAVE THE
08:40AM 3 BACKGROUND NECESSARY. I THINK IT'S -- IN THE TESTIMONY HE HAS
08:40AM 4 A SOFTWARE BACKGROUND, OR AT LEAST IN THE OPENING STATEMENTS.

08:40AM 5 BUT, AGAIN, THAT FOLLOW-UP QUESTION AND ANSWER RATHER,
08:40AM 6 MAYBE HE WAS GOING TO HAVE SOMEONE ELSE LOOK AT IT.

08:40AM 7 OKAY. I GUESS WHAT I'M POINTING OUT IS -- AND ACTUALLY,
08:40AM 8 THERE WAS NO OBJECTION TO THAT LINE OF QUESTIONING EITHER.

08:40AM 9 THE COMMENTS POINTED OUT ON PAGE 4 AT LINE 6, THERE'S
08:40AM 10 ANOTHER COLLOQUY THAT IS HIGHLIGHTED REGARDING SCOPE OF
08:40AM 11 EMPLOYMENT AND JOB DESCRIPTIONS.

08:40AM 12 AGAIN, AT PAGE 1663, THE ANSWER WAS, YEAH, I AGREE WITH, I
08:40AM 13 AGREE WITH -- THE QUESTION WAS, DO YOU AGREE WITH MR. BALWANI'S
08:41AM 14 ASSESSMENT? I THINK HE WAS TALKING ABOUT -- MR. BALWANI WAS
08:41AM 15 TALKING ABOUT HIS OBSERVATIONS. AND THE QUESTION WAS DO YOU
08:41AM 16 AGREE WITH HIM? AND THE WITNESS ANSWERED, AND THERE WAS NO
08:41AM 17 OBJECTION TO THAT ANSWER, WHICH POTENTIALLY COULD HAVE CALLED
08:41AM 18 UPON EXPERT TESTIMONY IF WE FOLLOW THAT SAME, THAT SAME
08:41AM 19 THOUGHT.

08:41AM 20 THERE WERE MANY QUESTIONS EVEN AT PAGE 1508 ON
08:41AM 21 CROSS-EXAMINE TALKING TO MS. CHEUNG ABOUT THE MATRIX AND WHAT'S
08:41AM 22 THE MATRIX, AND TELL US ABOUT WHAT THE MATRIX DID?

08:41AM 23 PAGE 1146 DESCRIBING THE PROCESS, RUNNING SAMPLES ON THE
08:41AM 24 SIEMENS ADVIA; PAGE 1147, THE NEED FOR CENTRIFUGING; PAGE 1149,
08:41AM 25 VALIDATION. SHE KNEW WHAT IT MEANT. NO OBJECTION.

08:41AM 1 NOW, THERE WAS A PAGE, I BELIEVE THE MOTION INDICATES AT
08:42AM 2 1246 AND 1245, THERE WAS AN OBJECTION TO RECONCILING THE TWO
08:42AM 3 STATEMENTS. AT PAGE 1246 THERE WAS AN OBJECTION, AND I THINK
08:42AM 4 THE COURT SAID WELL TAKEN, POINT WELL TAKEN. I SUSTAINED THE
08:42AM 5 OBJECTION.

08:42AM 6 AND THEN MR. BOSTIC LAID A FOUNDATION, I THINK, FOR THAT
08:42AM 7 CONTINUING OVER TO PAGE 1248.

08:42AM 8 PAGE 1224 THERE WERE QUESTIONS, DID NOT FEEL THAT THE
08:42AM 9 MACHINES HAD THE INFRASTRUCTURE TO RUN HEP C. NO OBJECTION.

08:42AM 10 HER OBJECTION REGARDING STABILITY IN HEP C WAS AT 1223.
08:42AM 11 NO OBJECTIONS.

08:42AM 12 THERE WERE THINGS IN THE PLEADINGS ALSO THAT TALK ABOUT
08:42AM 13 THE HACKING AND THE TESTIMONY REGARDING THE HACKING AT
08:42AM 14 PAGE 1665. NO OBJECTION TO THAT.

08:42AM 15 ALTHOUGH IT'S NOTED IN THE PLEADINGS TO STRIKE NOW -- NOW
08:42AM 16 YOU'RE ASKING TO STRIKE THAT. THERE WAS NO OBJECTION WHEN THAT
08:42AM 17 CAME IN.

08:42AM 18 THERE WAS REFERENCE TO THE PRIOR, THE PRIOR RULING IN THE
08:43AM 19 HOLMES CASE, AND THAT THIS TOPIC WAS RAISED AT THAT TIME IN AN
08:43AM 20 IN LIMINE MOTION. AND THE WORD "HACKING" WASN'T REFERENCED IN
08:43AM 21 THAT MOTION. THE WORD "TAMPERED" WAS USED. PERHAPS IT'S THE
08:43AM 22 SAME THING. BUT "TAMPERED," I BELIEVE, WAS THE WORD THAT WE
08:43AM 23 WERE DISCUSSING IN THE PRIOR MOTION, THE MOTION IN LIMINES IN
08:43AM 24 THE OTHER CASE.

08:43AM 25 BUT I TAKE THE POINT, YOU KNOW, TAMPERING, I UNDERSTAND

08:43AM 1 THAT COULD BE SEEN AS A PEJORATIVE TERM THAT MIGHT SUGGEST TO
08:43AM 2 THE JURY SOME NEFARIOUS ACTIVITY WAS DONE TO THESE MACHINES
08:43AM 3 THAT SHOULD CALL THEM TO QUESTION THAT.

08:43AM 4 THOSE ARE THE TYPES OF THINGS, OF COURSE, AS I SAID,
08:43AM 5 THERE'S NO OBJECTION TO THAT HACKING EITHER. LET ME JUST TAKE
08:43AM 6 A MOMENT.

08:43AM 7 DO YOU AGREE WITH THAT, COUNSEL?

08:43AM 8 MR. BRECHER: WITH WHICH POINT, YOUR HONOR?

08:43AM 9 THE COURT: THAT THERE WAS NO OBJECTION TO THE
08:43AM 10 HACKING?

08:43AM 11 MR. BRECHER: ON THAT PARTICULAR, THAT'S CORRECT,
08:44AM 12 YOUR HONOR.

08:44AM 13 THE COURT: AND THAT PERHAPS WAS STRATEGIC, PERHAPS
08:44AM 14 SOME OF THESE OTHER ITEMS THAT I MENTIONED THAT WERE NOT
08:44AM 15 OBJECTED TO WERE STRATEGIC IN SOME MANNER. I DON'T KNOW. I'M
08:44AM 16 NOT ASKING ANY QUESTION ABOUT THAT.

08:44AM 17 THE POINT IS, THE POINT IS THAT BECAUSE -- JUST BECAUSE
08:44AM 18 IT'S SCIENCE DOESN'T MEAN IT REQUIRES EXPERTISE. I APPRECIATE
08:44AM 19 DRAWING ATTENTION TO THIS. SOMETIMES IT'S NOT AS SHARP AN EDGE
08:44AM 20 AS WE WOULD LIKE IT TO BE. THERE ARE GREY AREAS IN THIS.

08:44AM 21 AND I BELIEVE THAT BOTH SIDES HAVE, IN THEIR EXAMINATION,
08:44AM 22 AND I UNDERSTAND CROSS-EXAMINATION IS RESPONSIVE TO DIRECT AND
08:44AM 23 SO SOMETIMES THERE'S, I'LL JUST CALL IT, CLEANUP. SOMETIMES
08:44AM 24 YOU WANT TO CLEAN UP SOME OF THE THINGS THAT WERE RAISED ON
08:44AM 25 DIRECT SO YOUR EXAMINATION HAS TO BE GUIDED AS SUCH.

08:44AM 1 BUT THE TESTIMONY ABOUT THESE MACHINES HAS NOT, HAS NOT
08:45AM 2 BEEN SUCH, AND THE COURT'S RULINGS, I HAVE NOT SEEN IT SUCH
08:45AM 3 THAT IT REQUIRES A 702.

08:45AM 4 NOW, THERE COULD HAVE BEEN OBJECTIONS FROM THE GOVERNMENT
08:45AM 5 TO QUESTIONS THAT THE DEFENSE ASKED, AGAIN, REGARDING -- I
08:45AM 6 THINK I TALKED A LITTLE BIT ABOUT IT, THE CENTRIFUGE, THE
08:45AM 7 VALIDATION, AND ALL OF THOSE THINGS, THAT ARGUABLY THOSE MIGHT
08:45AM 8 REQUIRE 702, SOMEONE TO TALK ABOUT, WHAT IS A CENTRIFUGE?
08:45AM 9 ISN'T THAT HOW THEY MAKE NUCLEAR WEAPONS? ISN'T THAT WHAT THEY
08:45AM 10 DO? AND WHAT IS THE DIFFERENCE BETWEEN THAT AND THE EDISON
08:45AM 11 MACHINE? SO DOES THAT REQUIRE AN EXPERTISE? PERHAPS.

08:45AM 12 BUT THERE WAS NO OBJECTION TO ANY OF THAT FROM THE
08:45AM 13 GOVERNMENT. I THINK THAT QUESTIONING CAME ON YOUR SIDE, WHICH
08:45AM 14 IS TO SAY THAT THERE IS SOME LATITUDE WHEN WE'RE TALKING ABOUT
08:45AM 15 THESE MACHINES.

08:45AM 16 IF IT GOES INTO, I THINK, SOMETHING LIKE WHAT DOES A
08:46AM 17 CENTRIFUGE DO? AND WHAT DOES IT ACTUALLY DO TO MOLECULES WHEN
08:46AM 18 THEY'RE SPUN AT 15 MILLION RPM'S? WHAT DOES THAT DO TO A
08:46AM 19 MOLECULE, OR HOW DOES THAT WORK? THEN, OF COURSE, WE GET INTO
08:46AM 20 EXPERTISE AND THOSE TYPES OF THINGS.

08:46AM 21 I STILL THINK WE'RE AT A HIGH LEVEL IN THE CONVERSATIONS
08:46AM 22 THAT BOTH SIDES HAVE DONE.

08:46AM 23 IS THAT A SUBSTANTIALLY HIGH LEVEL THAT IT'S NOT REQUIRING
08:46AM 24 EXPERTISE?

08:46AM 25 SOMETIMES IT GETS CLOSE, AND I'LL GRANT YOU THAT. I CAN

08:46AM 1 UNDERSTAND WHY THERE WOULD BE OBJECTIONS TO THAT, BUT, EXCUSE
08:46AM 2 ME, BUT AS I READ THROUGH THE PLEADINGS, I SEE A DISTINCTION
08:46AM 3 BETWEEN WHAT HAS BEEN ASKED AND WHAT HAS BEEN RECEIVED IN
08:46AM 4 EVIDENCE, THAT IS, NOTWITHSTANDING RAISING THE FIGUEROA-LOPEZ
08:46AM 5 CASE, AND WE KNOW WHAT HAPPENED IN THAT CASE AND THE OFFICERS
08:47AM 6 WERE -- THE AGENTS WERE ALLOWED TO TESTIFY AND GIVE THEIR
08:47AM 7 OPINIONS AS TO WHAT I THINK WAS A DRUG COURIER, THESE ARE ALL
08:47AM 8 ATTRIBUTES OF A DRUG COURIER. OF COURSE, IT WAS HARMLESS ERROR
08:47AM 9 IN THAT BECAUSE OF OTHER EVIDENCE IN THE CASE, OF COURSE.

08:47AM 10 BUT IT DOESN'T APPEAR TO ME THAT THIS -- WHAT HAS BEEN
08:47AM 11 ELICITED SO FAR HAS BEEN REQUIRED OF AN EXPERT BACKGROUND OR
08:47AM 12 ANY EXPERTISE. THESE -- MS. CHEUNG, DR. PANDORI WERE EMPLOYEES
08:47AM 13 THERE. DR. PANDORI WAS TESTIFYING ABOUT HE'S A LAB DIRECTOR.
08:47AM 14 HE WAS ASKED QUESTIONS ABOUT WHAT DOES A LAB DIRECTOR DO? YOU
08:47AM 15 CAME INTO THIS -- I KNOW THERE WERE QUESTIONS ABOUT REGULATORY
08:47AM 16 THINGS, AND HE WAS TALKING ABOUT THAT'S MY JOB DESCRIPTION.
08:47AM 17 THAT'S WHAT I'M SUPPOSED TO DO. I'M SUPPOSED TO KNOW ABOUT THE
08:47AM 18 REGULATIONS, AND THAT'S HOW I OPERATE AND HAVE OVERSIGHT OVER
08:48AM 19 THE LAB.

08:48AM 20 WHAT DOES A LAWYER DO? A LAWYER ADVOCATES.

08:48AM 21 BUT WE'RE NOT GOING TO ASK YOU TO REVIEW YOUR LAW REVIEW
08:48AM 22 ARTICLES, COUNSEL.

08:48AM 23 MR. BRECHER: I'M HAPPY TO DO SO, YOUR HONOR.
08:48AM 24 THEY'RE NOT GREAT.

08:48AM 25 THE COURT: WE'LL CALL YOUR PARENTS IN WHEN YOU DO

08:48AM 1 THAT, AND THEY'LL BE HAPPY TO JOIN US IN HEARING THOSE. I'M
08:48AM 2 SURE THEY'RE PROUD OF YOU.

08:48AM 3 MR. BRECHER: THAT'S THE SOLE LEADERSHIP,
08:48AM 4 YOUR HONOR.

08:48AM 5 THE COURT: WELL, MY POINT IS, MY POINT IS -- AGAIN,
08:48AM 6 PARDON ME. I DON'T MEAN TO BE INDELICATE ABOUT IT. BUT USING
08:48AM 7 THE TOASTER ANALOGY, THAT'S REALLY WHAT I SEE THIS AS AND THAT
08:48AM 8 IS WITH THIS EDISON MACHINE.

08:48AM 9 SHE WAS TALKING ABOUT THIS IS WHAT COULD BE RUN. YOU
08:48AM 10 NEEDED THE T-CUPS, YOU NEEDED THIS, AND THAT MACHINE COULDN'T
08:48AM 11 BE RUN WITHOUT THESE THINGS. I DON'T BELIEVE THAT REQUIRED
08:48AM 12 EXPERTISE.

08:48AM 13 NOW, I DO HAVE SOME CONCERN, AND I THINK THE DEFENSE
08:48AM 14 RAISED THIS, THIS WAS A CONCERN, IT WAS RAISED IN THE MOTIONS
08:48AM 15 IN LIMINE PREVIOUSLY IN THE OTHER CASE, AND WE TALKED ABOUT IT
08:49AM 16 IN THIS CASE, AND THAT IS THE DANGER OF USING REGULATIONS, THAT
08:49AM 17 IS, CIVIL REGULATIONS TO GIVE THE JURY AN INFERENCE THAT IF
08:49AM 18 THERE'S A VIOLATION OF A CIVIL REGULATION, THEY SHOULD USE OR
08:49AM 19 CONSIDER IN ANY WAY, USE THAT IN THEIR THOUGHT PROCESS AS TO A
08:49AM 20 VIOLATION OF A CRIMINAL STATUTE.

08:49AM 21 AND THAT OVERRIDES, I THINK, THIS CASE, AND THAT'S A
08:49AM 22 CONCERN THAT I HAVE, AND I LOOK AT THE GOVERNMENT WHEN I SAY
08:49AM 23 THAT.

08:49AM 24 I THINK THERE WERE SOME OBJECTIONS, AT LEAST ONE OBJECTION
08:49AM 25 FROM THE DEFENSE ABOUT THAT, AND I DO HAVE CONCERN ABOUT THAT,

08:49AM 1 AND WE'LL USE THIS TIME FOR ME TO EXPRESS THAT TO THE
08:49AM 2 GOVERNMENT. I WANT TO BE CAREFUL THAT THE JURY DOES NOT, IS
08:49AM 3 NOT SOMEHOW INFORMED INTENTIONALLY OR ACCIDENTALLY THAT A
08:49AM 4 VIOLATION OF A CIVIL REGULATION IS GOING TO BE INFERENCE OR IN
08:49AM 5 SOME WAY CAUSE THEM TO THINK THAT THERE'S BEEN A VIOLATION OF A
08:50AM 6 CRIMINAL SECTION, AND THAT'S IMPROPER.

08:50AM 7 MR. BOSTIC: IF I COULD RESPOND TO THAT, YOUR HONOR?

08:50AM 8 THE COURT: YES.

08:50AM 9 MR. BOSTIC: SO THE COURT'S POINT, OF COURSE, ARE
08:50AM 10 WELL TAKEN.

08:50AM 11 IT CERTAINLY IS NOT THE GOVERNMENT'S INTENT TO IMPLY TO
08:50AM 12 THE JURY THAT THEY SHOULD CONVICT BECAUSE OF A VIOLATION OF A
08:50AM 13 REGULATORY REQUIREMENT, AND I THINK THAT COMES THROUGH IN THE
08:50AM 14 QUESTIONS AND ANSWERS.

08:50AM 15 IN THE INSTANCES WHERE THOSE REGULATIONS WERE DISCUSSED,
08:50AM 16 AND I'M THINKING PRIMARILY OF THE REGULATIONS CONCERNING
08:50AM 17 PROFICIENCY TESTING, THE FOCUS -- WE ATTEMPTED TO KEEP THE
08:50AM 18 FOCUS ON THE ISSUE OF TESTING ACCURACY. AND THOSE TWO ISSUES
08:50AM 19 ARE REALLY INTERTWINED.

08:50AM 20 AND SO THE POINT OF THAT TESTIMONY IS THAT PROFICIENCY
08:50AM 21 TESTING IS A REQUIREMENT, AND THE FOCUS IS NOT ON THE FACT THAT
08:50AM 22 IT IS A REGULATION AND WHAT THE PENALTIES ARE FOR VIOLATING IT.
08:51AM 23 WE DIDN'T INTRODUCE THE REGULATION AS, YOU KNOW, AN EXHIBIT.
08:51AM 24 WE DIDN'T ASK ABOUT, YOU KNOW, WHAT CONSEQUENCES THERE MIGHT BE
08:51AM 25 IF A LAB VIOLATES THOSE REGULATIONS, WE DIDN'T HIGHLIGHT THAT.

08:51AM 1 INSTEAD, THE FOCUS WAS ON THE FUNCTION THAT THAT
08:51AM 2 REQUIREMENT SERVES, WHICH IS TO PROVIDE A WAY TO CONFIRM THAT
08:51AM 3 LABORATORY TESTING IS ACTUALLY DELIVERING RELIABLE RESULTS, AND
08:51AM 4 THAT'S A CHIEF ISSUE THAT IS RELEVANT TO THIS CASE.

08:51AM 5 SO THE FACT THAT THERE WAS DISCUSSION ABOUT THOSE
08:51AM 6 REGULATIONS, IT REALLY IS ANCILLARY TO THE CENTRAL ISSUE HERE,
08:51AM 7 WHICH IS THE TREATMENT OF PROFICIENCY TESTING AT THERANOS, AT
08:51AM 8 DEFENDANT'S COMPANY, AND WHETHER THE COMPANY'S USE OR NON-USE
08:51AM 9 OF PROFICIENCY TESTING HAD AN EFFECT ON THE RELIABILITY AND
08:51AM 10 ACCURACY OF THE RESULTS THAT WERE GOING OUT TO PATIENTS.

08:52AM 11 THE COURT: OKAY. THANK YOU.

08:52AM 12 COUNSEL.

08:52AM 13 MR. BRECHER: THANK YOU, YOUR HONOR.

08:52AM 14 I APPRECIATE THE COURT TAKING THIS TIME. I KNOW THE COURT
08:52AM 15 OFFERED A HOST OF COMMENTS THIS MORNING, BUT I KNOW -- I AM
08:52AM 16 SENSITIVE THAT MR. BOSTIC DIDN'T HAVE AN OPPORTUNITY TO RESPOND
08:52AM 17 IN WRITING, SO I WANTED TO MAKE SURE THAT THE GOVERNMENT HAS
08:52AM 18 COMPLETED ITS RESPONSE TO THE OTHER ISSUES THAT THE COURT
08:52AM 19 RAISED IF IT HAD ANY.

08:52AM 20 MR. BOSTIC: THE ONLY ISSUE THAT I DIDN'T ADDRESS
08:52AM 21 YET IS THE USE OF THE TERM "HACKED."

08:52AM 22 ON THAT ISSUE, I'LL JUST POINT OUT BRIEFLY THAT I
08:52AM 23 UNDERSTOOD THE COURT'S ORDER TO BE PREVENTING THE RISK OF A
08:52AM 24 WITNESS USING A PEJORATIVE TERM TO GIVE THEIR OWN OPINION
08:52AM 25 CRITICIZING OR PASSING JUDGMENT ON THERANOS'S MODIFICATION OF

08:52AM 1 THIRD PARTY DEVICES. THAT'S NOT WHAT HAPPENED YESTERDAY OR THE
08:52AM 2 DAY BEFORE YESTERDAY.

08:52AM 3 WHEN DR. PANDORI USED THAT TERM "HACKED," HE WAS USING A
08:52AM 4 TERM THAT HE HAD HEARD AT THERANOS. THAT WAS THE COMPANY'S OWN
08:52AM 5 INTERNAL TERM APPARENTLY FOR THEIR PRACTICE OF MODIFYING THESE
08:53AM 6 DEVICES.

08:53AM 7 SO I CERTAINLY DON'T THINK IT'S UNFAIR FOR HIM TO USE, TO
08:53AM 8 SIMPLY REPEAT THE TERM THAT HE HAD HEARD AT THE COMPANY. HE
08:53AM 9 WAS NOT BEING PEJORATIVE OR PASSING ANY JUDGMENT ON THAT
08:53AM 10 PRACTICE.

08:53AM 11 THE COURT: AND I DON'T BELIEVE, I DON'T BELIEVE THE
08:53AM 12 GOVERNMENT FOLLOWED UP ON THAT AND ASKED ANY QUESTIONS ABOUT
08:53AM 13 THAT.

08:53AM 14 I'M SURE THE DEFENSE WILL, OR IF YOU CHOOSE TO, THAT'S
08:53AM 15 SOMETHING THAT YOU WOULD DO TO GET CLARITY ON THAT TERM, WHERE
08:53AM 16 THAT CAME FROM.

08:53AM 17 MR. BRECHER: POSSIBLY, YOUR HONOR.

08:53AM 18 AND I VERY MUCH APPRECIATE THE COURT'S COMMENTS, AND I
08:53AM 19 THINK I AGREE WITH MOST OF THEM.

08:53AM 20 I WANT TO MAKE SURE THAT OUR POSITION ON WHAT CONSTITUTES
08:53AM 21 EXPERT TESTIMONY IS CLEAR, AND IF AT THE END OF THE DAY I
08:53AM 22 ACCOMPLISH THAT AND THERE REMAINS DAYLIGHT BETWEEN MY
08:53AM 23 UNDERSTANDING AND THE COURT'S UNDERSTANDING, I'M UNDER NO
08:53AM 24 ILLUSIONS AS TO WHOSE PERSPECTIVE IS GOING TO GOVERN THE TRIAL
08:53AM 25 AND WE WILL HAVE MADE OUR RECORD CLEAR.

08:53AM 1 BUT I THINK IT'S IMPORTANT TO POINT OUT THAT THE
08:53AM 2 OBJECTIONS AS WE RAISED THEM IN THE BRIEF AND IN SOME OF OUR
08:54AM 3 PAST BRIEFING ARE NOT CENTERED ON TECHNICAL SUBJECTS. INDEED,
08:54AM 4 EVEN THE COURT'S EXAMPLE ABOUT MOLECULES AND WHAT GOES INTO
08:54AM 5 THEM, THAT DOESN'T GIVE ME A LOT OF HEARTBURN, YOUR HONOR. THE
08:54AM 6 DEFINITION GAME, I DON'T WORRY ABOUT THAT TOO MUCH.

08:54AM 7 AS MR. BOSTIC POINTED OUT AT THE END OF THE DAY YESTERDAY,
08:54AM 8 THIS IS A TECHNICAL CASE. IT DEALS WITH LAB TESTING. THE JURY
08:54AM 9 IS GOING TO HEAR TERMS THAT THEY NEED TO UNDERSTAND FROM THESE
08:54AM 10 LAY WITNESSES, AND MOST OF THE WITNESSES ON THE GOVERNMENT'S
08:54AM 11 LIST ARE LAY WITNESSES, HOW THOSE TERMS WERE USED AT THERANOS.

08:54AM 12 OUR OBJECTION IS A LITTLE BIT DIFFERENT. 702, AS I
08:54AM 13 UNDERSTAND IT, AND I THINK NOT ONLY FIGUEROA-LOPEZ BUT EVERY
08:54AM 14 OTHER NINTH CIRCUIT OPINION TO ADDRESS THIS NARROW ISSUE THAT
08:54AM 15 I'M AWARE OF SAYS THE SAME THING, IT'S THE REASONING THAT
08:54AM 16 REQUIRES GOING FROM WHAT YOU OBSERVE IN YOUR PERCIPIENT
08:54AM 17 EXPERIENCE TO WHAT CONCLUSIONS AND OPINIONS YOU ACTUALLY DRAW.
08:54AM 18 THAT'S WHERE IMPERMISSIBLE EXPERTISE CAN BE IMPLICATED, AND THE
08:54AM 19 CENTRAL HALLMARK OF EXPERT TESTIMONY IS CAUSE AND EFFECT.

08:55AM 20 MS. CHEUNG IS WELCOME TO TESTIFY, AND WE WOULDN'T HAVE
08:55AM 21 OBJECTING TO HER TESTIFYING, THAT MACHINES FAILED QUALITY
08:55AM 22 CONTROL TESTS BASED ON THE STANDARDS THAT THERANOS SET.

08:55AM 23 WHAT HAPPENED TO THOSE MACHINES? WHAT DID THEY DO WITH
08:55AM 24 THOSE MACHINES? THAT'S FINE.

08:55AM 25 SHE'S ALSO WELCOME TO TESTIFY ABOUT WHAT DID SHE, OR IF

08:55AM 1 SHE HAS PERSONAL KNOWLEDGE, OTHERS COMMUNICATE TO MR. BALWANI
08:55AM 2 OR POTENTIALLY MS. HOLMES AND OTHERS AT THERANOS ABOUT THEIR
08:55AM 3 CONCERNS. ALL ABOVE BOARD.

08:55AM 4 BUT WHEN YOU MOVE FROM THERE WAS A PROBLEM WITH THE
08:55AM 5 QUALITY CONTROLS, I SAW THAT THEY WERE FAILING, AND I'M TURNING
08:55AM 6 TO YOU, JURORS, AND I'M TELLING YOU I'M CONCERNED BECAUSE TO ME
08:55AM 7 WHAT THAT INDICATES IS THAT THERE IS SOME FUNDAMENTAL ACCURACY
08:55AM 8 PROBLEM, IF YOU LOOK AT THE ADVISORY COMMITTEE NOTES TO 702,
08:55AM 9 WHICH I THINK IS A VERY TELLING EXAMPLE BECAUSE IT GOES FROM
08:55AM 10 SAYING A DOCTOR -- A PHYSICIAN, AND, OF COURSE, MS. CHEUNG WAS
08:55AM 11 A JUNIOR LAB ASSOCIATE FRESH OUT OF COLLEGE, A PHYSICIAN CAN'T
08:55AM 12 SAY UNLESS NOTICE AS AN EXPERT, THAT BRUISING INDICATES TRAUMA.

08:56AM 13 I DON'T KNOW HOW A JUNIOR LAB ASSOCIATE OR EVEN SOMEONE
08:56AM 14 LIKE DR. PANDORI CAN, CONSISTENT WITH THOSE ADVISORY COMMITTEE
08:56AM 15 NOTES, CONSISTENT WITH FIGUEROA-LOPEZ, SAY WE SAW THESE
08:56AM 16 PHENOMENA, THERE WERE INTERNAL POLICIES AND PRACTICES AROUND
08:56AM 17 THESE PHENOMENA, WE RAISED CONCERNS ABOUT THESE PHENOMENA,
08:56AM 18 MAYBE THEY WERE IGNORED, AND NOW I'M CONCLUDING FROM THAT THAT
08:56AM 19 THERE IS SOME DEEP UNDERLYING PROBLEM.

08:56AM 20 THE COURT: WELL, I APPRECIATE THAT.

08:56AM 21 BUT SOME OF THE COLLOQUY TALKED ABOUT THE SOP'S, AND THERE
08:56AM 22 WERE, THERE WERE -- THIS WAS CONTRARY TO THE SOP'S. WHY DID
08:56AM 23 THAT CREATE CONCERN? WELL, IT WASN'T -- IT DIDN'T FOLLOW THE
08:56AM 24 SOP'S.

08:56AM 25 YOUR COLLEAGUE, MR. COOPERSMITH, ON HIS CROSS-EXAMINATION

08:56AM 1 OF MS. CHEUNG INVITED HER TO LOOK AT AN SOP, AND THEN I BELIEVE
08:56AM 2 SHE CONCEDED THAT HER METHODOLOGY DID NOT FOLLOW THE SOP.

08:56AM 3 SO THERE WAS -- IF YOU SEE, THERE'S SOME THREAD ABOUT
08:56AM 4 THIS. IT'S NOT -- IT ISN'T LEFT ON. THERE IS SOME -- THERE'S
08:57AM 5 TESTIMONY ABOUT THE SOP'S, THERE'S TESTIMONY ABOUT WHAT THE
08:57AM 6 MACHINES COULD DO AND NOT DO, AND I THINK BOTH SIDES HAVE
08:57AM 7 FLIRTED WITH THAT AND THOSE CONCEPTS. IT'S IMPORTANT TO YOUR
08:57AM 8 CASES, I SUPPOSE. BUT IT DOES NOT -- IN THE COURT'S VIEW, THE
08:57AM 9 WAY THAT THE QUESTIONS HAVE BEEN ASKED, AND IT HASN'T RISEN TO
08:57AM 10 THAT LEVEL, THE FIGUEROA-LOPEZ TYPE OF TESTIMONY. I JUST HAVE
08:57AM 11 NOT SEEN IT THAT WAY. YOU HAVE MADE YOUR RECORD THERE, AND I
08:57AM 12 APPRECIATE THAT.

08:57AM 13 AND WE'LL BE MINDFUL GOING FORWARD ALSO, AND I APPRECIATE
08:57AM 14 YOU BRINGING THIS TO THE COURT'S ATTENTION.

08:57AM 15 MR. BRECHER: OH, I'M SORRY, YOUR HONOR.

08:57AM 16 THE COURT: NO, NO. IT'S IMPORTANT TO HAVE THIS
08:57AM 17 DISCUSSION. WE TALKED A LITTLE BIT ABOUT -- I'VE SHARED WITH
08:57AM 18 YOU MY CONCERNS ALSO ABOUT THIS CROSSOVER OF A CIVIL REGULATION
08:57AM 19 AND PENALTIES THAT MIGHT IN SOME WAY INFECT A JURY'S OPINION
08:58AM 20 ABOUT A CRIMINAL STATUTE, AND I HAVE CONCERNS ABOUT THE TENSION
08:58AM 21 BETWEEN THOSE TWO THINGS.

08:58AM 22 MR. BRECHER: YES, YOUR HONOR.

08:58AM 23 IF I COULD SPEAK TO THAT FOR A MOMENT, ALTHOUGH I SUPPOSE
08:58AM 24 I SHOULD FIRST PAUSE ON THIS HACKED POINT?

08:58AM 25 FIRST, JUST TO MAKE SURE THE RECORD IS CLEAR, THAT RULING

08:58AM 1 IS NOT SOLELY IN 798. IT WASN'T JUST CONFINED TO THE HOLMES
08:58AM 2 TRIAL. IT WAS INCORPORATED BY REFERENCE IN 1326 IN THE RULING
08:58AM 3 IN THIS TRIAL ON PAGE 29.

08:58AM 4 AND WHILE THE WORD THERE THAT WAS USED WAS "TAMPERING,"
08:58AM 5 THE LANGUAGE THAT THE COURT USED IN EITHER ORDER DID NOT
08:58AM 6 CONTAIN THE PERSONAL OPINION RESTRICTION THAT MR. BOSTIC
08:58AM 7 OFFERED. CERTAINLY I DON'T READ IT THAT WAY, AND I DON'T THINK
08:58AM 8 THERE'S ANY TEXT IN THAT ORDER THAT COULD BE READ THAT WAY.

08:58AM 9 WHAT THE COURT PROHIBITED, AS I UNDERSTAND THE RULING, IS
08:58AM 10 THE USE OF LANGUAGE THAT WOULD IMPLY TO THE JURY, REGARDLESS OF
08:58AM 11 WHETHER IT'S THE WITNESS'S OPINION OR ANYTHING ELSE, THAT
08:58AM 12 SOMETHING IMPROPER OR UNTOWARD HAD BEEN DONE.

08:58AM 13 THE COURT: RIGHT.

08:58AM 14 MR. BRECHER: AND I THINK IT'S APPROPRIATE TO
08:59AM 15 INSTRUCT THE JURY THAT THERE'S BEEN NO FOUNDATION LAID FOR
08:59AM 16 THAT. IT WAS ALSO THE FACT THAT --

08:59AM 17 THE COURT: DO I DO THAT ABSENT AN OBJECTION? HOW
08:59AM 18 DO I DO THAT NOW?

08:59AM 19 MR. BRECHER: IT'S A GREAT QUESTION, YOUR HONOR.

08:59AM 20 THE COURT: THANK YOU.

08:59AM 21 MR. BRECHER: SO I DO KNOW THAT THERE ARE SOME
08:59AM 22 POINTS IN WHICH THERE WERE OBJECTIONS RAISED IN THESE COMMENTS
08:59AM 23 AND SOME IN WHICH THEY WERE NOT.

08:59AM 24 AND IF THE COURT IS GOING TO REST PART OF ITS RULING ON A
08:59AM 25 SORT OF TARGET GONE BY WAIVER, I UNDERSTAND THAT, I DO.

08:59AM 1 BUT I WOULD SAY A COUPLE OF THINGS. FIRST, OBVIOUSLY
08:59AM 2 YOUR HONOR HAS THE DISCRETION TO EXCUSE SUCH A WAIVER, AND HERE
08:59AM 3 WE -- YOU KNOW, MR. COOPERSMITH RAISED THE OBJECTION AT THE END
08:59AM 4 OF THE DAY, WE TEED IT UP IN A BRIEF THE FOLLOWING DAY.

08:59AM 5 BUT THE SECOND POINT I WOULD SAY IS THAT YOUR HONOR HAS A
08:59AM 6 BROADER RANGE OF REMEDIES. EVEN IF THE COURT IS NOT INCLINED
08:59AM 7 TO STRIKE TESTIMONY, IF YOU AGREE WITH ME NOW, AND BASED ON
08:59AM 8 YOUR COMMENTS I DON'T TAKE FOR GRANTED THAT YOUR HONOR DOES,
08:59AM 9 BUT IF ON SOME OF THESE ISSUES YOUR HONOR AGREES WITH ME, THE
08:59AM 10 COURT HAS THE OPTION OF INSTRUCTING THE GOVERNMENT THAT THEY
08:59AM 11 CAN'T REFER TO THE IMPERMISSIBLE TESTIMONY IN CLOSING ARGUMENT,
09:00AM 12 FOR EXAMPLE.

09:00AM 13 THE COURT ALSO HAS THE OPTION TO TURN BACK TO THE POINT
09:00AM 14 ABOUT LEGAL CONCLUSIONS, AND I KNOW THAT'S AN ISSUE THAT
09:00AM 15 YOUR HONOR AND I HAVE HAD A CHANCE TO DISCUSS IN THE PAST.

09:00AM 16 THE COURT COULD INSTRUCT THE JURY THIS MORNING, JUST A
09:00AM 17 BRIEF CURATIVE INSTRUCTION, A REMINDER THAT MR. BALWANI IS NOT
09:00AM 18 ON TRIAL FOR THE VIOLATION OF CIVIL REGULATIONS, BECAUSE I DO
09:00AM 19 THINK THAT THERE WAS SOME VERY TROUBLING TESTIMONY THERE,
09:00AM 20 INCLUDING ABOUT WHAT THE FEDERAL GOVERNMENT AND ALL STATES
09:00AM 21 REQUIRE. AND IT IS PERFECTLY CONSISTENT WITH 1326 FOR THE
09:00AM 22 GOVERNMENT TO DO, AS MR. BOSTIC ORIGINALLY DID IN HIS
09:00AM 23 TESTIMONY, WHICH IS, DID YOU RAISE THESE CONCERNS WITH
09:00AM 24 MR. BALWANI? WHAT WAS HIS REACTION? THAT'S PRECISELY WHAT THE
09:00AM 25 COURT SAID WAS OKAY.

09:00AM 1 BUT THE FOLLOWUP IS PRECISELY WHAT THE COURT SAID IS NOT
09:00AM 2 OKAY, AND THAT WAS THE QUESTION, WERE YOU GUESSING? WAS THIS A
09:00AM 3 GUESS ABOUT WHAT THE REGULATIONS MEAN? THAT IS AN INVITATION
09:00AM 4 FOR THE WITNESS TO TURN TO THE JURY, AND I THINK YOUR HONOR SAW
09:01AM 5 EVEN FROM A LATERAL PERSPECTIVE THAT DR. PANDORI GAVE A NUMBER
09:01AM 6 OF PROFESSORIAL ASIDES IN HIS TESTIMONY YESTERDAY, IN HIS
09:01AM 7 TESTIMONY ON WEDNESDAY. THAT IS AN INVITATION TO TURN TO THE
09:01AM 8 JURY AND TELL THEM WHAT THE LAW IS, AND THAT'S NOT PERMISSIBLE.
09:01AM 9 AND I THINK THE COURT COULD CURE THAT THIS MORNING.

09:01AM 10 I THINK THAT THAT'S EVERYTHING THAT I HAVE, YOUR HONOR,
09:01AM 11 EXCEPT FOR ONE MINOR POINT, AND THAT'S BACK ON THE EXPERT
09:01AM 12 TESTIMONY ISSUE.

09:01AM 13 AS I SAID, AS WE UNDERSTAND THE CASE LAW, AND IT SEEMS TO
09:01AM 14 ME THAT WE UNDERSTAND IT DIFFERENTLY THAN YOUR HONOR, AND
09:01AM 15 THAT'S OKAY. AS YOU POINT OUT, WE'VE MADE OUR RECORD.

09:01AM 16 THERE'S NO CURE FROM GROUNDING SPECIALIZED REASONING AND
09:01AM 17 EXPERTISE IN WHAT YOU LEARNED ON THE JOB. I THINK THAT'S WHAT
09:01AM 18 FIGUEROA-LOPEZ STANDS FOR.

09:01AM 19 BUT EVEN IF WE'RE TOTALLY OFF THE RESERVATION ON THAT
09:01AM 20 POINT, AND YOUR HONOR IS CORRECT, AND OBVIOUSLY YOU'RE THE
09:01AM 21 JUDGE SO IT'S GOING TO WORK OUT THAT WAY, I HAVE TO DRAW
09:01AM 22 ATTENTION TO WHAT WE QUOTED IN OUR BRIEF, THIS PASSAGE ON
09:02AM 23 PAGE 1663 TO 64 OF THE TRANSCRIPT WHERE DR. PANDORI IS OFFERED
09:02AM 24 THAT LIFELINE BY MR. BOSTIC, AND HE PUSHES IT AWAY.

09:02AM 25 HE SAYS, WAS THIS BASED ON THE SCOPE OF YOUR EMPLOYMENT,

09:02AM 1 YOUR COMFORT RAISING THESE CONCERNS ABOUT PT? AND DR. PANDORI
09:02AM 2 SAYS, I DON'T KNOW. I DIDN'T REALLY KNOW WHAT THE SCOPE OF MY
09:02AM 3 EMPLOYMENT WAS, BUT I FELT COMFORTABLE DOING IT, QUOTE,
09:02AM 4 "BECAUSE I HAVE A LOT OF EXPERIENCE IN DIRECTING LABORATORY
09:02AM 5 ACTIVITIES AND LOOKING AT PT'S, AND I'M BOARD CERTIFIED AS A
09:02AM 6 HIGH COMPLEXITY LAB DIRECTOR, I FELT THAT I COULD CONTRIBUTE."

09:02AM 7 IN OTHER WORDS, WHAT HE SAID TO THE JURY, IN ESSENCE,
09:02AM 8 YOUR HONOR, WAS, NO, I'M NOT SURE THAT IT WAS WITHIN THE SCOPE
09:02AM 9 OF MY EMPLOYMENT, BUT I'M AN EXPERT, RIGHT? I DON'T KNOW ANY
09:02AM 10 UNIVERSE IN WHICH THAT SORT OF TESTIMONY IS PERMISSIBLE EVEN
09:02AM 11 UNDER THE STANDARD THAT THE COURT SAYS.

09:02AM 12 THE COURT: WHAT WAS THE QUESTION? WHAT WAS THE
09:02AM 13 QUESTION?

09:02AM 14 MR. BRECHER: THE QUESTION WAS WHETHER, IF I RECALL
09:02AM 15 CORRECTLY, IT WAS WHETHER DR. PANDORI FELT CONFIDENT IN
09:03AM 16 OFFERING HIS OPINIONS ON PROFICIENCY TESTING ON THOSE
09:03AM 17 REGULATIONS AND WHAT THEY REQUIRE, WHICH, AGAIN, NOT ONLY
09:03AM 18 RAISES 702 ISSUES, BUT ALSO -- AND MR. CAZARES RAISED THIS
09:03AM 19 OBJECTION IN THE MOMENT -- ALSO CALLS UPON DR. PANDORI TO OFFER
09:03AM 20 ANOTHER LEGAL CONCLUSION, THE SAME ISSUE THAT YOUR HONOR
09:03AM 21 SUGGESTED WAS SOMEWHAT TROUBLING.

09:03AM 22 THE COURT: I RECALL THAT QUESTION ABOUT HIS DUTIES,
09:03AM 23 AND I'LL HAVE TO LOOK AT THE TRANSCRIPT AGAIN.

09:03AM 24 BUT, MR. BOSTIC, DO YOU HAVE THAT AT YOUR FINGERTIPS?

09:03AM 25 MR. BOSTIC: YOUR HONOR, IF I REMEMBER THAT

09:03AM 1 CORRECTLY, THAT QUESTIONING WAS ABOUT ESSENTIALLY WHY
09:03AM 2 DR. PANDORI WAS PART OF THAT CONVERSATION WITH MR. BALWANI AND
09:03AM 3 OTHERS AT THERANOS.

09:03AM 4 SO THE QUESTION TO HIM WAS REALLY -- AND I'M SORRY, I
09:03AM 5 DON'T HAVE THE EXACT WORDING, BUT THE GIST OF THE QUESTION WAS,
09:03AM 6 WHY WERE YOU EXPRESSING YOUR VIEWS HERE? WAS IT PART OF YOUR
09:03AM 7 JOB TO WEIGH IN ON THIS? WHY WERE YOU PROVIDING YOUR OPINIONS
09:03AM 8 TO THE DEFENDANT ON THIS TOPIC.

09:04AM 9 AND SO THAT WAS HIS OPPORTUNITY TO EXPLAIN WHY HE DID WHAT
09:04AM 10 HE DID, WHY HE WAS OFFERING THAT INPUT TO MR. BALWANI AND
09:04AM 11 OTHERS AT THE COMPANY AT THE TIME.

09:04AM 12 I DISAGREE THAT THAT VEERS INTO EXPERT TESTIMONY OR THAT
09:04AM 13 THAT'S HIM BOLSTERING HIS EXPERT OPINIONS.

09:04AM 14 THE COURT: MY RECOLLECTION OF THE QUESTION -- I'M
09:04AM 15 SORRY, I DON'T HAVE THE TRANSCRIPT IN FRONT OF ME NOW, BUT IT
09:04AM 16 WAS SOMETHING TO THAT VEIN DESCRIBING HIS JOB AND DID YOUR JOB
09:04AM 17 ENCOMPASS THE ABILITY TO OPINE AS TO MR. BALWANI'S
09:04AM 18 OBSERVATIONS, OR WHATEVER IT WAS.

09:04AM 19 MR. BRECHER: YOUR HONOR, I HAPPEN TO HAVE THE
09:04AM 20 TESTIMONY IN FRONT OF ME. IT'S DOCKET 1384-3 AT PAGE 1663.

09:04AM 21 AND MY OBJECTION IS NOT NECESSARILY TO THE QUESTION, IT'S
09:04AM 22 TO THE ANSWER THAT WAS GIVEN.

09:04AM 23 AND, IN FACT, ON THE HACKING POINT I'LL NOTE, IN FAIRNESS
09:04AM 24 TO MR. BOSTIC, I DON'T UNDERSTAND THE GOVERNMENT TO HAVE
09:04AM 25 ELICITED THAT DELIBERATELY.

09:04AM 1 THE COURT: RIGHT.

09:04AM 2 MR. BRECHER: BUT AS WE POINT OUT, THERE IS SOME
09:05AM 3 OBLIGATION TO INSTRUCT YOUR WITNESSES ABOUT THE COURT'S
09:05AM 4 RULINGS.

09:05AM 5 I APOLOGIZE, I THOUGHT YOU HAD A QUESTION.

09:05AM 6 ON PAGE 1663 THE QUESTION IS, FIRST OF ALL, AND I'M
09:05AM 7 LOOKING AT LINE 19, YOUR HONOR, FIRST OF ALL, AS LABORATORY
09:05AM 8 DIRECTOR AT THE TIME, DID YOU FEEL QUALIFIED TO GIVE YOUR INPUT
09:05AM 9 ON WHAT PROFICIENCY TESTING SHOULD LOOK LIKE AT THE LAB?

09:05AM 10 THE QUESTION DOES COUCH ITSELF IN TERMS OF HIS JOB
09:05AM 11 RESPONSIBILITIES, BUT IT ALSO ASKS WHETHER HE FEELS QUALIFIED.

09:05AM 12 BUT REGARDLESS, YOUR HONOR, ON WHETHER THE QUESTION ITSELF
09:05AM 13 WAS PERMISSIBLE, DR. PANDORI REJECTS THE PREMISE THAT IT WAS
09:05AM 14 HIS EMPLOYMENT THAT QUALIFIES HIM.

09:05AM 15 WHAT HE SAYS IS THAT IT'S MY BACKGROUND, IT'S THE OTHER
09:05AM 16 LABS THAT I'VE WORKED AT, IT'S MY EDUCATION, IT'S MY BOARD
09:05AM 17 CERTIFICATION. THAT IS EXPERT TESTIMONY ON ANY DEFINITION OF
09:05AM 18 THE TERM.

09:05AM 19 I'LL JUST FLAG ON THAT ONE THERE WERE OBJECTIONS, SEVERAL
09:05AM 20 ACTUALLY, ON THAT PASSAGE.

09:05AM 21 BUT, AGAIN, EVEN IF THE COURT IS INCLINED NOT TO STRIKE
09:06AM 22 THE TESTIMONY FOR REASONS, WHETHER YOU DISAGREE SUBSTANTIVELY,
09:06AM 23 YOU DISAGREE PROCEDURALLY, OR YOU JUST THINK IT WOULD CREATE
09:06AM 24 CONFUSION, THERE ARE OTHER REMEDIES FOR THE COURT TO CONSIDER.

09:06AM 25 THE COURT: THANK YOU.

09:06AM 1 MR. BRECHER: THANK YOU, YOUR HONOR.

09:06AM 2 MR. BOSTIC: YOUR HONOR, IF I COULD JUST BRIEFLY
09:06AM 3 RESPOND TO A COUPLE OF POINTS?

09:06AM 4 FIRST OF ALL, ON THE USE OF THE TERM "HACKED," I DISAGREE
09:06AM 5 THAT ANY CURATIVE INSTRUCTION IS NECESSARY, ESPECIALLY AT THIS
09:06AM 6 POINT.

09:06AM 7 THERE IS AN OPPORTUNITY ON CROSS-EXAMINATION FOR THE
09:06AM 8 DEFENSE TO CLARIFY WITH THIS WITNESS WHETHER THIS WITNESS IS
09:06AM 9 PASSING JUDGMENT ON OR CRITICIZING THERANOS'S USE OF MODIFIED
09:06AM 10 DEVICES.

09:06AM 11 I EXPECT THAT THE WITNESS WOULD SAY THAT HIS ONLY CONCERN
09:06AM 12 WAS WITH THE ACCURACY PROBLEMS THAT HE SAW AFTER THE FACT.

09:06AM 13 I DON'T UNDERSTAND THIS WITNESS TO BE SAYING THAT THERE
09:06AM 14 WAS SOMETHING WRONG PER SE WITH THE PRACTICE OF MAKING CHANGES
09:06AM 15 TO THOSE THIRD PARTY DEVICES.

09:06AM 16 I UNDERSTAND THE DEFENSE HAS PROVIDED THE COURT WITH A
09:06AM 17 DICTIONARY DEFINITION WITH THE TERM "HACKED." I'LL POINT OUT
09:06AM 18 THAT IF A TERM LIKE "TAMPERED" IS FORBIDDEN AND THEN ALL
09:07AM 19 SYNONYMS OF THAT TERM ARE FORBIDDEN, IT BECOMES DIFFICULT TO
09:07AM 20 CONVEY THE IDEA IN THE FIRST PLACE.

09:07AM 21 I'M SURE I COULD FIND A THESAURUS WHERE TERMS LIKE
09:07AM 22 "ALTERED" AND "MODIFIED" ARE IN SIMILAR LISTS OF SYNONYMS FOR
09:07AM 23 TERMS LIKE "TAMPERED."

09:07AM 24 "HACKED" IS NOT NECESSARILY A PEJORATIVE TERM. IN FACT,
09:07AM 25 MY UNDERSTANDING IS THAT IN THE TECHNICAL FIELD IT SOMETIMES IS

09:07AM 1 USED AS A COMPLIMENT. IT'S A WAY TO FIND A CREATIVE SOLUTION
09:07AM 2 TO A PROBLEM.

09:07AM 3 SO I DON'T THINK THERE'S A SERIOUS CONCERN THAT THIS
09:07AM 4 WITNESS HAS BEEN SEEN TO CRITICIZE THAT PRACTICE EXCEPT FOR THE
09:07AM 5 ACCURACY PROBLEMS THAT IT PRODUCED, AND I THINK TO THE EXTENT
09:07AM 6 THAT THERE IS ANY LACK OF CLARITY, THAT CAN BE CLEARED UP ON
09:07AM 7 CROSS WITHOUT AN INSTRUCTION.

09:07AM 8 I THINK THE COURT IS RIGHT ON, ON THE ABILITY OF THESE
09:07AM 9 WITNESSES TO TESTIFY ABOUT WHAT THEY SAW AS OPERATORS OF THESE
09:07AM 10 DEVICES.

09:08AM 11 WHEN MS. CHEUNG, FOR EXAMPLE, TESTIFIED ABOUT HER CONCERNS
09:08AM 12 THAT SHE HAD AFTER SEEING QC PERFORMANCE, TO TAKE THE COURT'S
09:08AM 13 TOASTER ANALOGY, IF SOMEONE SAID EVERY TIME I PLUG IN MY
09:08AM 14 TOASTER IT SPARKS AND BURSTS INTO FLAMES, THAT MAKES ME WORRIED
09:08AM 15 THAT I AM NOT GOING TO BE ABLE TO MAKE TOAST FOR MY BREAKFAST
09:08AM 16 TOMORROW MORNING.

09:08AM 17 THAT'S THE SAME THING MS. CHEUNG WAS SAYING, WHENEVER THE
09:08AM 18 DEVICE WAS CHECKED IN THE QC STEP, SHE SAW PROBLEMS, THAT
09:08AM 19 RAISED CONCERNS FOR HER THAT THE DEVICE WAS NOT UP TO THE TASK
09:08AM 20 THAT IT WAS CREATED TO DO, WHICH WAS PROVIDE ACCURATE RESULTS
09:08AM 21 FOR PATIENT TESTING.

09:08AM 22 YOU DON'T NEED THE PERSON WHO DESIGNED THE MACHINE OR AN
09:08AM 23 EXPERT TO TESTIFY ABOUT THAT IN THE SAME WAY THAT YOU WOULDN'T
09:08AM 24 NEED SOMEONE TO TESTIFY ABOUT PROBLEMS WITH THE TOASTER.

09:08AM 25 FINALLY, WHEN WITNESSES LIKE THESE COUCH THEIR TESTIMONY

09:08AM 1 IN TERMS OF WHAT THEY LEARNED ON THE JOB, WHAT THEY SAW ON THE
09:08AM 2 JOB, THAT DOES ADDRESS THE DEFENSE'S CONCERNS, OR IT SHOULD,
09:08AM 3 BECAUSE THIS IS ALL ABOUT THE DEFENDANT'S STATE OF MIND AND HIS
09:09AM 4 INTENT, HIS KNOWLEDGE, AND SO THE PRACTICES AT THERANOS, THE
09:09AM 5 WAY TERMS WERE USED AT THERANOS, THE THINGS SEEN AT THERANOS,
09:09AM 6 ALL AT THE DEFENDANT'S COMPANY, ARE ALL RELEVANT TO WHAT HE WAS
09:09AM 7 AWARE OF, WHAT HE UNDERSTOOD, AND THEN WHAT HE INTENDED IN THE
09:09AM 8 DECISIONS THAT HE MADE. SO THAT INFORMATION IS CERTAINLY
09:09AM 9 RELEVANT.

09:09AM 10 DEPRIVING THE JURY OF THAT WOULD HAVE THESE WITNESSES
09:09AM 11 SIMPLY SAY, I WORKED AT THERANOS FOR A TIME, AND THEN I SUPPOSE
09:09AM 12 THEY WOULD NEED TO SKIP TO I RAISED CONCERNS TO MANAGEMENT AND
09:09AM 13 THEN I LEFT. THEY WOULDN'T BE ABLE TO EXPLAIN THAT CRITICAL
09:09AM 14 INTERVENING STEP THAT CAUSED THEM TO TAKE THOSE LATER STEPS AND
09:09AM 15 GIVE NOTICE TO THE DEFENDANT AND OTHERS.

09:09AM 16 SO FOR THOSE REASONS, THE GOVERNMENT OPPOSES THE MOTION.

09:09AM 17 THE COURT: THANK YOU.

09:09AM 18 MR. BRECHER: THANK YOU, YOUR HONOR.

09:09AM 19 JUST BRIEFLY.

09:09AM 20 FIRST OF ALL, I DO THINK THERE'S A MEANINGFUL DIFFERENCE
09:09AM 21 BETWEEN THE WORD "HACKED" AND THE WORD "MODIFIED," AND I WOULD
09:09AM 22 URGE THE COURT TO LOOK AT AGAIN 1326 AND THE PORTIONS OF 798
09:10AM 23 THAT IT ADOPTS BECAUSE WHAT DR. PANDORI SUBJECTIVELY MEANT OR
09:10AM 24 DIDN'T MEAN IS NOT WHAT THAT ORDER TURNS ON, AT LEAST AS I
09:10AM 25 UNDERSTAND IT.

09:10AM 1 BUT SECOND, AS TO THE PARADE OF HORRIBLES THAT MR. BOSTIC
09:10AM 2 OFFERED UP AT THE END ABOUT WHAT WITNESSES WOULDN'T BE ALLOWED
09:10AM 3 TO SAY, ALL I CAN DO IS I ASK THE COURT TO REVIEW THE
09:10AM 4 TRANSCRIPT OF THIS ARGUMENT AND THE PLEADINGS AND ASK IF I'VE
09:10AM 5 EVER HINTED AT ANYTHING LIKE THAT SORT OF WATERED DOWN
09:10AM 6 TESTIMONY.

09:10AM 7 THEY CAN TALK ABOUT PROBLEMS. THEY CAN TALK ABOUT THINGS
09:10AM 8 NOT WORKING THE WAY THEY WERE SUPPOSED TO.

09:10AM 9 IT'S MAKING THAT INFERENTIAL LEAP FROM I DREW A
09:10AM 10 CONCLUSION, AND THIS IS MY CONCLUSION. THAT'S VERY, VERY
09:10AM 11 DIFFICULT WHEN THAT LEAP REQUIRES DEMONSTRABLE EXPERTISE, AND
09:10AM 12 WE THINK IN THE INSTANCES THAT WE'VE FLAGGED THAT IT DOES.

09:10AM 13 THE COURT: ALL RIGHT. WELL, THANK YOU. THANK YOU
09:10AM 14 VERY MUCH.

09:10AM 15 ANYTHING FURTHER?

09:10AM 16 MR. BOSTIC: SUBMIT IT, YOUR HONOR.

09:10AM 17 MR. BRECHER: THANK YOU, YOUR HONOR. NOTHING
09:10AM 18 FURTHER.

09:10AM 19 THE COURT: THANK YOU.

09:10AM 20 THE MOTION TO STRIKE, I'M NOT GOING TO STRIKE THE
09:11AM 21 TESTIMONY THAT YOU DESCRIBED. I RESPECTFULLY DECLINE YOUR
09:11AM 22 INVITATION TO DO SO FOR THE REASONS STATED ON THE RECORD. I
09:11AM 23 DON'T BELIEVE THAT IT HAS RISEN TO A 702 TYPE OF TESTIMONY THAT
09:11AM 24 REQUIRES THAT.

09:11AM 25 AS TO WHETHER OR NOT THE COURT SHOULD ADVISE THE JURY OF

09:11AM 1 ANY SPECIAL INSTRUCTION REGARDING THE CIVIL REGULATIONS AND
09:11AM 2 THAT, I'M NOT GOING TO DO THAT NOW.

09:11AM 3 I EXPECT THAT THERE WILL BE A FINAL INSTRUCTION THAT -- IN
09:11AM 4 THE FINAL INSTRUCTIONS THAT WILL TOUCH ON THAT, BUT I'M GOING
09:11AM 5 TO RESERVE THAT AND INDICATE THAT SHOULD THAT ISSUE COME UP, I
09:11AM 6 MAY VERY WELL USE THAT AS A REMEDY TO INFORM THE JURY ABOUT
09:11AM 7 WHAT THEY SHOULD DO AND HOW THEY SHOULD TREAT THAT TYPE OF
09:11AM 8 TESTIMONY. SO I SUPPOSE THERE'S A RESERVATION ON THAT, AND
09:11AM 9 WE'LL JUST SEE WHERE THAT DEVELOPS.

09:12AM 10 AS TO THIS TERM "HACKED" MY SENSE IS THAT YOUR COLLEAGUES,
09:12AM 11 OR YOU, IF YOU CROSS-EXAMINE, WILL HAVE THE OPPORTUNITY TO
09:12AM 12 CLEAR THAT UP AND ASK QUESTIONS IF YOU WISH. MAYBE YOU DON'T.
09:12AM 13 BUT THAT'S WHAT CROSS-EXAMINATION IS FOR.

09:12AM 14 THE OTHER THING I NOTED IN THESE TYPES OF CASES, SOMETIMES
09:12AM 15 RAISING THE ISSUE AGAIN UNNECESSARILY RAISES IT AND DRAWS
09:12AM 16 ATTENTION TO IT FOR THE JURY, PARTICULARLY IN SCIENTIFIC CASES
09:12AM 17 WHERE SOME OF THIS HAS BEEN, AND I'M NOT OFFERING ANY CRITIQUE
09:12AM 18 OR OBSERVATION OF THE PERFORMANCE OF THE ATTORNEYS, BUT RATHER
09:12AM 19 JUST THE MATERIAL, IT CAN BE DRY. AND FOR LAY JURORS, THE
09:12AM 20 TESTIMONY IS SOMETIMES -- THE INFORMATION RATHER IS SOMETIMES
09:12AM 21 DRY AND DOESN'T HAVE THE SAME MEANING. AND IF YOU WANT TO BEAT
09:12AM 22 THE DRUM AND CALL THEIR ATTENTION TO IT AGAIN, YOU CAN DO THAT.
09:12AM 23 THAT'S WHAT CLOSING ARGUMENTS ARE FOR I SUPPOSE.

09:13AM 24 SO I'M NOT GOING TO TAKE ANY REMEDIAL ACTION AT THIS
09:13AM 25 POINT. I'M GOING TO RESERVE THE OPPORTUNITY TO DO THAT. I'LL

09:13AM 1 SEE WHAT CROSS-EXAMINATION DOES AS WE GO FORWARD.

09:13AM 2 ALL RIGHT. IT'S ABOUT A QUARTER AFTER THE HOUR NOW.

09:13AM 3 PLEASE RECALL THAT REGRETTABLY WE HAVE TO TAKE A BREAK AT
09:13AM 4 10:30 TODAY, AND IT WILL PROBABLY BE ABOUT AN HOUR, AN HOUR
09:13AM 5 BREAK, AND WE'LL COME BACK AS CLOSE TO 11:30 AS WE CAN, AND
09:13AM 6 THEN WE'LL FINISH, FINISH THE DAY AT 3:00. I THINK I TOLD THEM
09:13AM 7 3:00 TODAY.

09:13AM 8 I BELIEVE WE ONLY HAVE TWO DAYS NEXT WEEK IF I'M NOT
09:13AM 9 MISTAKEN, TWO DAYS OF TESTIMONY NEXT WEEK, AND THEN THE
09:13AM 10 FOLLOWING WEEK WE'LL START A REAL TRIAL SCHEDULE HOPEFULLY. SO
09:13AM 11 THANK YOU FOR YOUR PATIENCE.

09:13AM 12 MR. BOSTIC: THANK YOU, YOUR HONOR.

09:13AM 13 MR. BRECHER: THANK YOU, YOUR HONOR.

09:13AM 14 (RECESS FROM 9:13 A.M. UNTIL 9:21 A.M.)

09:21AM 15 (JURY IN AT 9:21 A.M.)

09:21AM 16 THE COURT: THANK YOU. GOOD MORNING.

09:21AM 17 WE'RE BACK ON THE RECORD. OUR JURY IS PRESENT.

09:21AM 18 ALL COUNSEL IS PRESENT, AND THE DEFENDANT IS PRESENT.

09:21AM 19 LADIES AND GENTLEMEN, IT'S NICE TO SEE YOU. I HAD TO
09:21AM 20 SPEND SOME TIME WITH THESE LAWYERS TO GET THEIR HELP ON
09:21AM 21 SOMETHING THIS MORNING, SO I APOLOGIZE FOR THE DELAY.

09:21AM 22 BEFORE WE BEGIN, THOUGH, LET ME ASK YOU THAT QUESTION.

09:21AM 23 DURING OUR BREAK HAVE ANY OF YOU -- DID ANY OF YOU HAVE CAUSE
09:21AM 24 TO READ, DISCUSS, OR LEARN ANYTHING ABOUT THIS CASE OUTSIDE OF
09:21AM 25 THIS COURTROOM?

09:21AM 1 IF SO, WOULD YOU PLEASE RAISE YOUR HAND NOW.

09:21AM 2 I SEE NO HANDS. THANK YOU.

09:21AM 3 LADIES AND GENTLEMEN, I DO WANT TO TELL YOU ONE OTHER
09:21AM 4 THING BEFORE WE START TODAY. THIS MORNING I'VE DISCUSSED
09:21AM 5 THINGS WITH THE LAWYERS, AND WE ALL AGREE THAT WE WILL BE IN
09:21AM 6 SESSION ON SATURDAY AND SUNDAY, SO I JUST WANT YOU TO KNOW
09:22AM 7 THAT.

09:22AM 8 (LAUGHTER.)

09:22AM 9 THE COURT: OKAY. EVERYBODY KNOWS IT'S APRIL 1ST,
09:22AM 10 DON'T THEY? OKAY. THANK YOU VERY MUCH.

09:22AM 11 ALL RIGHT. WE'RE NOT GOING TO BE IN SESSION SATURDAY AND
09:22AM 12 SUNDAY.

09:22AM 13 (LAUGHTER.)

09:22AM 14 THE COURT: WE'LL BE IN SESSION TODAY. I JUST WANT
09:22AM 15 TO REMIND YOU OF OUR SCHEDULE. WE WILL HAVE TO BREAK AT 10:30,
09:22AM 16 AND WE'LL BREAK FOR ABOUT AN HOUR, I THINK, AND THEN WE'LL
09:22AM 17 CONTINUE THROUGH THE AFTERNOON, AND HOPEFULLY WE CAN BREAK
09:22AM 18 AROUND 3:00 O'CLOCK.

09:22AM 19 NEXT WEEK I BELIEVE WE'RE ONLY IN SESSION TWO DAYS.

09:22AM 20 IS THAT RIGHT, COUNSEL? I THINK IT'S TWO DAYS NEXT WEEK.

09:22AM 21 MR. SCHENK: YES, YOUR HONOR.

09:22AM 22 THE COURT: RIGHT. AND THEN THE WEEK FOLLOWING,
09:22AM 23 HOPEFULLY WE CAN START ON A MORE NORMAL THREE DAY SCHEDULE.

09:22AM 24 I'VE ASKED YOU TO LOOK AT YOUR SCHEDULES AND TO SEE IF WE
09:22AM 25 MIGHT EXTEND UNTIL 4:00 O'CLOCK SO WE CAN TRY TO CAPTURE AS

09:22AM 1 MUCH TIME AS WE CAN. WE'LL TALK ABOUT THAT NEXT WEEK.

09:22AM 2 ALL RIGHT. THANK YOU VERY MUCH.

09:22AM 3 DO WE HAVE THE WITNESS BACK?

09:22AM 4 MR. BOSTIC: YES, YOUR HONOR.

09:22AM 5 THE COURT: OKAY. THANK YOU.

09:22AM 6 IF WE CAN CALL DR. PANDORI.

09:23AM 7 GOOD MORNING, SIR. GO AHEAD AND TAKE THE STAND AGAIN IF

09:23AM 8 YOU WOULD, SIR. MAKE YOURSELF COMFORTABLE AGAIN.

09:23AM 9 WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR NAME

09:23AM 10 AGAIN, PLEASE.

09:23AM 11 THE WITNESS: MARK PANDORI.

09:23AM 12 THE COURT: THANK YOU. COUNSEL.

09:23AM 13 **(GOVERNMENT'S WITNESS, MARK PANDORI, WAS PREVIOUSLY**

09:23AM 14 **SWORN.)**

09:23AM 15 **DIRECT EXAMINATION (RESUMED)**

09:23AM 16 BY MR. BOSTIC:

09:23AM 17 Q. GOOD MORNING, DR. PANDORI.

09:23AM 18 A. GOOD MORNING.

09:23AM 19 Q. YESTERDAY WE SPENT A LITTLE TIME DISCUSSING A MEETING THAT

09:23AM 20 YOU HAD WITH MR. BALWANI ABOUT WHETHER THE EDISON SHOULD

09:23AM 21 CONTINUE TO BE USED AT THERANOS.

09:23AM 22 DO YOU RECALL THAT?

09:23AM 23 A. YES.

09:23AM 24 Q. CAN YOU HELP US PLACE THAT MEETING IN TIME? APPROXIMATELY

09:23AM 25 WHEN WAS THAT IF YOU REMEMBER?

09:24AM 1 A. I HAVE DIFFICULTY PLACING THAT MEETING IN TIME.

09:24AM 2 Q. WAS --

09:24AM 3 A. IT WAS -- I'M SORRY TO INTERRUPT YOU.

09:24AM 4 IT WAS LIKELY MARCH OR APRIL.

09:24AM 5 Q. YOU LEFT THE COMPANY IN MAY OF 2014; IS THAT RIGHT?

09:24AM 6 A. CORRECT.

09:24AM 7 Q. AND DO YOU REMEMBER WHETHER THIS WAS THE WEEK BEFORE YOU

09:24AM 8 LEFT OR SOME TIME EARLIER THAN THAT?

09:24AM 9 A. SOME TIME EARLIER THAN THAT.

09:24AM 10 Q. YOU TESTIFIED BEFORE THAT YOU HAD EXPRESSED THE VIEW THAT

09:24AM 11 MAYBE THE EDISON SHOULDN'T BE USED AT ALL AT THERANOS, AT LEAST

09:24AM 12 TEMPORARILY; IS THAT RIGHT?

09:24AM 13 A. I EXPRESSED THAT VIEW.

09:24AM 14 Q. AND HAD YOU EXPRESSED THAT VIEW TO MR. BALWANI DIRECTLY

09:24AM 15 BEFORE THE MEETING THAT WE TALKED ABOUT?

09:24AM 16 A. NO.

09:24AM 17 Q. DO YOU UNDERSTAND THAT YOUR COMMENT HAD GOTTEN BACK TO

09:24AM 18 MR. BALWANI?

09:24AM 19 A. IT WAS MY ASSESSMENT THAT IT HAD OR GUESS THAT IT HAD.

09:25AM 20 Q. AND WHAT MADE YOU THINK THAT?

09:25AM 21 A. BECAUSE HE CAME --

09:25AM 22 MR. CAZARES: OBJECTION. HEARSAY. ALSO FOUNDATION.

09:25AM 23 THE COURT: OVERRULED.

09:25AM 24 YOU CAN FINISH YOUR ANSWER.

09:25AM 25 THE WITNESS: HE CAME, HE CAME TO EXPRESS SOME

09:25AM 1 DISAGREEMENT WITH ME ON THAT TOPIC.

09:25AM 2 BY MR. BOSTIC:

09:25AM 3 Q. TELL US ABOUT THE CIRCUMSTANCES OF THAT? WHAT DO YOU
09:25AM 4 REMEMBER ABOUT THAT ENCOUNTER?

09:25AM 5 A. WELL, I'M IN MY OFFICE, IT WAS AFTER 5:00 P.M., AND HE
09:25AM 6 CAME -- WE DIDN'T HAVE A SCHEDULED MEETING, BUT HE CAME WITH
09:25AM 7 TWO ADDITIONAL, TWO MEMBERS OF THE PRODUCT MANAGEMENT TEAM, AND
09:25AM 8 CAME TO MY OFFICE, AND I WAS SITTING AT MY DESK, AND HE LET ME
09:25AM 9 HAVE IT.

09:25AM 10 Q. WHEN YOU SAY HE LET YOU HAVE IT, WHAT DOES THAT MEAN?

09:26AM 11 A. HE WAS UPSET. AND I DON'T REMEMBER THE DETAILS OR THE
09:26AM 12 EXACT WORDS OF THE CONVERSATION AT THIS POINT, BUT I REMEMBER
09:26AM 13 THE SUBSTANCE OF IT WAS THAT HE -- THAT I WASN'T -- MAYBE I WAS
09:26AM 14 MAKING DECISIONS OR DRAWING CONCLUSIONS THAT I WASN'T
09:26AM 15 PREPARED -- OR I WASN'T IN A POSITION TO BE MAKING.

09:26AM 16 Q. DURING THAT CONVERSATION, DID HE ASK YOU ANY QUESTIONS
09:26AM 17 ABOUT WHY YOU HAD SAID WHAT YOU HAD SAID?

09:26AM 18 A. THAT'S NOT MY RECOLLECTION.

09:26AM 19 Q. DID HE SEEM INTERESTED IN UNDERSTANDING YOUR CONCERNS
09:26AM 20 ABOUT THE EDISON DEVICE?

09:26AM 21 A. IN THE CONTEXT OF THAT CONVERSATION?

09:26AM 22 Q. YES.

09:26AM 23 A. NO. NO.

09:26AM 24 Q. THE TWO OTHER PEOPLE THAT HE BROUGHT, WERE THOSE
09:26AM 25 INDIVIDUALS AT THERANOS WHO YOU HAD PREVIOUSLY BEEN INVOLVED

09:26AM 1 WITH IN CONVERSATIONS ABOUT ISSUES WITH EDISONS?

09:26AM 2 A. NO.

09:26AM 3 Q. DO YOU REMEMBER THEM SAYING ANYTHING DURING THAT
09:26AM 4 CONVERSATION?

09:26AM 5 A. NO.

09:26AM 6 Q. WERE YOU SURPRISED BY MR. BALWANI'S NEGATIVE REACTION TO
09:27AM 7 YOUR VIEW ABOUT THE EDISON?

09:27AM 8 MR. CAZARES: OBJECTION. LEADING.

09:27AM 9 THE COURT: I'M SORRY?

09:27AM 10 MR. CAZARES: LEADING.

09:27AM 11 THE COURT: I DIDN'T HEAR YOU BECAUSE YOU WEREN'T
09:27AM 12 STANDING.

09:27AM 13 MR. CAZARES: OBJECTION. LEADING. SORRY,
09:27AM 14 YOUR HONOR.

09:27AM 15 THE COURT: OVERRULED.

09:27AM 16 BY MR. BOSTIC:

09:27AM 17 Q. WOULD YOU LIKE THE QUESTION AGAIN, DR. PANDORI?

09:27AM 18 A. NO, I WASN'T SURPRISED.

09:27AM 19 Q. WHY WEREN'T YOU SURPRISED?

09:27AM 20 A. BECAUSE IT WAS -- IT FELT LIKE THE KIND OF ANSWER -- THE
09:27AM 21 KIND OF SITUATION THAT WE WERE IN, HE WAS FERVENT ABOUT
09:27AM 22 EVERYTHING AND WAS A STAUNCHED DEFENDER OF WHAT WAS GOING ON
09:27AM 23 THERE, AND SUPPORTER, AND I THINK HE REALLY WAS A PROPONENT FOR
09:27AM 24 USING THAT TECHNOLOGY.

09:27AM 25 Q. AND WHEN YOU SAY THAT THAT WAS YOUR IMPRESSION OF HIS

09:27AM 1 VIEW, HOW HAD THAT MANIFESTED IN THE PAST IN YOUR EXPERIENCE?

09:27AM 2 A. CAN YOU RESTATE THE QUESTION.

09:27AM 3 Q. SURE.

09:27AM 4 WHAT MAKES YOU SAY THAT THAT WAS MR. BALWANI'S VIEW? WHAT
09:27AM 5 HAD YOU OBSERVED THAT HAD LEFT YOU WITH THAT IMPRESSION?

09:28AM 6 A. WELL, IN SITUATIONS WHERE THERE WAS REASON TO BELIEVE THAT
09:28AM 7 THE EDISONS DIDN'T WORK PROPERLY, HE ALWAYS SIDED AND CAME TO
09:28AM 8 THEIR DEFENSE OR QUESTIONED OTHER PEOPLE'S ASSESSMENTS OF THAT.

09:28AM 9 Q. I'D LIKE TO TALK ABOUT THE WAY THAT INFORMATION MOVED
09:28AM 10 AROUND THERANOS.

09:28AM 11 FIRST, CAN I ASK YOU TO TURN TO TAB 1620 IN THE BINDER IN
09:28AM 12 FRONT OF YOU?

09:28AM 13 A. YES.

09:28AM 14 Q. LET ME ASK YOU, BEFORE WE GET TO THAT DOCUMENT, YOU WERE
09:28AM 15 TALKING ABOUT MR. BALWANI'S APPROACH TO SITUATIONS WHERE THE
09:28AM 16 EDISON WAS QUESTIONED.

09:28AM 17 LET ME ASK, DID MR. BALWANI ENCOURAGE COMMUNICATION
09:28AM 18 BETWEEN PEOPLE AT THERANOS ABOUT ISSUES WITH THE ANALYZER?

09:29AM 19 A. THE OPPOSITE. WE WERE JUST -- PEOPLE IN THE COMPANY WERE
09:29AM 20 SOMEWHAT DISCOURAGED FROM COMMUNICATING WITH ONE ANOTHER ON
09:29AM 21 VARIOUS TOPICS.

09:29AM 22 Q. LOOKING AT THE DOCUMENT IN FRONT OF YOU AT TAB 1620.

09:29AM 23 DO YOU HAVE THAT?

09:29AM 24 A. YES.

09:29AM 25 Q. AND DO YOU SEE IN FRONT OF YOU AN EMAIL CHAIN INCLUDING

09:29AM 1 MR. BALWANI RELATING TO THIS ISSUE OF COMMUNICATION BETWEEN
09:29AM 2 INDIVIDUALS AT THERANOS?

09:29AM 3 A. I'D HAVE TO TAKE A FEW SECONDS TO LOOK AT THIS.

09:29AM 4 Q. THAT'S FINE.

09:29AM 5 (PAUSE IN PROCEEDINGS.)

09:30AM 6 THE WITNESS: YEAH, I REMEMBER THIS.

09:30AM 7 BY MR. BOSTIC:

09:30AM 8 Q. OKAY. AND DO YOU SEE THAT THIS IS AN EMAIL INCLUDING
09:30AM 9 MR. BALWANI?

09:30AM 10 A. EXCUSE ME?

09:30AM 11 Q. DO YOU SEE THAT THIS IS AN EMAIL CHAIN INCLUDING
09:30AM 12 MR. BALWANI?

09:30AM 13 A. YES.

09:30AM 14 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1620.

09:30AM 15 MR. CAZARES: OBJECTION. HEARSAY, LACK OF
09:30AM 16 FOUNDATION. THIS WITNESS IS NOT ON THE EMAIL.

09:30AM 17 MR. BOSTIC: THIS IS UNDER 801(B)(2), YOUR HONOR.

09:30AM 18 THE COURT: DO YOU WANT TO -- THIS IS FROM

09:30AM 19 MR. BALWANI?

09:30AM 20 MR. BOSTIC: YES, YOUR HONOR.

09:30AM 21 THE COURT: OVERRULED.

09:30AM 22 MR. BOSTIC: MAY WE PUBLISH?

09:30AM 23 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

09:30AM 24 (GOVERNMENT'S EXHIBIT 1620 WAS RECEIVED IN EVIDENCE.)

09:30AM 25 BY MR. BOSTIC:

09:30AM 1 Q. LET'S START WITH PAGE 2 OF THIS EXHIBIT.

09:30AM 2 IF WE CAN ZOOM IN ON THE MIDDLE OF THE PAGE TO CAPTURE THE

09:30AM 3 FIRST PART OF THE ORIGINAL EMAIL.

09:30AM 4 ACTUALLY, LET'S GO ONE DOWN FROM THERE.

09:30AM 5 DR. PANDORI, DO YOU SEE THAT THIS EMAIL CHAIN BEGINS WITH

09:31AM 6 AN EMAIL FROM KIMBERLY ALFONSO AT THERANOS?

09:31AM 7 A. WELL, THAT PART IS CUT OFF, WHAT YOU'VE HIGHLIGHTED. BUT,

09:31AM 8 YES, I SEE THAT NOW.

09:31AM 9 Q. OKAY. THANK YOU.

09:31AM 10 DO YOU REMEMBER WHO MS. ALFONSO WAS?

09:31AM 11 A. NO.

09:31AM 12 Q. OKAY. DO YOU SEE THAT SHE SENDS THIS EMAIL TO

09:31AM 13 SUNNY BALWANI?

09:31AM 14 A. YEAH.

09:31AM 15 Q. AND SHE SAYS, "PLEASE SEE BELOW FOR THIS WEEK'S UPDATES.

09:31AM 16 LET ME KNOW IF YOU'D LIKE TO DISCUSS CONCERNS LIVE AND PLEASE

09:31AM 17 ADVISE ON NEEDS."

09:31AM 18 DO YOU SEE THAT?

09:31AM 19 A. YES.

09:31AM 20 Q. AND LET'S CONTINUE TO THE FOLLOWING EMAIL FROM HER, AND

09:31AM 21 LET'S LOOK AT PAGE 3 AND ZOOM IN ON THE TOP.

09:31AM 22 DR. PANDORI, DO YOU SEE IN HER EMAIL TO MR. BALWANI

09:31AM 23 THERE'S A SECTION ENTITLED CONCERNS?

09:31AM 24 A. I SEE THAT.

09:31AM 25 Q. AND ONE OF THE BULLET POINTS SAYS, "TURN-AROUND TIMES

09:31AM 1 HIGH, MEETING WITH TRACY, ALLISON, AND MARK PANDORI."

09:31AM 2 DO YOU SEE THAT?

09:31AM 3 A. YES.

09:31AM 4 Q. AND THEN THE BULLET POINT UNDERNEATH THAT SAYS, "MARK
09:32AM 5 EXTREMELY CONCERNED WITH VOLUME GENERATED BY SALES REPS."

09:32AM 6 A. YES.

09:32AM 7 Q. AROUND THIS TIME PERIOD, DO YOU RECALL HAVING CONCERNS
09:32AM 8 ABOUT TURN-AROUND TIMES AND VOLUME?

09:32AM 9 A. YES.

09:32AM 10 Q. AND WHY WERE YOU CONCERNED ABOUT THAT?

09:32AM 11 A. OUR TURN-AROUND TIMES WERE LONG. THE FAILURE -- THE
09:32AM 12 INSTRUMENTS FAILED A LOT, THE EDISONS ACTUALLY FAILED A LOT,
09:32AM 13 WHICH MEANT THAT THERE WERE A LOT OF RERUNS, WHICH MEANT THAT
09:32AM 14 THERE WERE EXTENDED TURN-AROUND TIMES, WHICH IS TO SAY THAT IT
09:32AM 15 WOULD TAKE A LONG PERIOD OF TIME FOR US TO GET A RESULT BACK
09:32AM 16 OUT TO A CLINICIAN OR A PATIENT.

09:32AM 17 AND SO BECAUSE EVEN A FEW SPECIMENS COMING IN WERE MEETING
09:32AM 18 THAT TROUBLE. IF MORE WERE TO COME IN, THAT TROUBLE WOULD BE
09:32AM 19 COMPOUNDED.

09:32AM 20 Q. LET'S ZOOM OUT. AND IF WE COULD LOOK AT THE BOTTOM OF
09:32AM 21 THIS EMAIL AND SEE MS. ALFONSO'S EMAIL SIGNATURE.

09:33AM 22 DO YOU SEE THAT INDICATES THAT SHE'S THE GENERAL MANAGER,
09:33AM 23 SALES AND BUSINESS DEVELOPMENT?

09:33AM 24 A. I SEE THAT.

09:33AM 25 Q. OKAY. LET'S GO TO PAGE 1 OF THIS EXHIBIT AND ZOOM IN ON

09:33AM 1 THE BOTTOM HALF OF THE PAGE.

09:33AM 2 IN THAT SELECTION, DR. PANDORI, DO YOU SEE AN EMAIL FROM
09:33AM 3 MR. BALWANI ON MARCH 17TH RESPONDING TO THIS TOPIC?

09:33AM 4 A. I SEE IT, YES.

09:33AM 5 Q. AND HE SAYS, "START WITH ALLISON DIRECTLY. THIS SHOULD
09:33AM 6 HAVE NEVER HAPPENED. SHE SHOULD HAVE RECEIVED CLEAR GOALS AND
09:33AM 7 INSTRUCTIONS AND HER INTERFACING WITH LAB -- LET ALONE
09:33AM 8 ORGANIZING OTHER MEETINGS WITH LAB IS NOWHERE ON HER AGENDA."

09:33AM 9 DO YOU SEE THAT?

09:33AM 10 A. YES. YES.

09:33AM 11 Q. LET'S GO UP TO THE TOP OF THIS PAGE AND SEE ANOTHER
09:33AM 12 SIMILAR EMAIL FROM MR. BALWANI.

09:34AM 13 AND DO YOU SEE THERE AT THE TOP OF THE PAGE MR. BALWANI
09:34AM 14 WRITES AGAIN AND SAYS, "I SPOKE WITH TRACY AND COMMUNICATED
09:34AM 15 THIS TO HER CLEARLY THAT THIS CANNOT HAPPEN AGAIN. SHE
09:34AM 16 UNDERSTANDS."

09:34AM 17 DO YOU SEE THAT?

09:34AM 18 A. YES.

09:34AM 19 Q. AROUND THIS TIME -- SO WE'RE IN MARCH OF 2014. WHAT WAS
09:34AM 20 THE POLICY AT THERANOS IN CONNECTION WITH PEOPLE FROM DIFFERENT
09:34AM 21 DEPARTMENTS SPEAKING TO EACH OTHER ABOUT THESE TOPICS?

09:34AM 22 A. IT WAS MY UNDERSTANDING THAT THAT WAS DISCOURAGED. THEY
09:34AM 23 WANTED ALL INFORMATION TO GO THROUGH A PROCESS THAT WENT UP
09:34AM 24 THROUGH MANAGEMENT.

09:34AM 25 Q. AND WHERE DID THAT UNDERSTANDING COME FROM?

09:34AM 1 A. WELL, TALKING TO OTHER PEOPLE IN THE COMPANY.

09:34AM 2 Q. AND WHAT WAS YOUR UNDERSTANDING AS TO WHERE THAT DIRECTION

09:34AM 3 WAS COMING FROM? WHOSE PREFERENCE WAS IT THAT --

09:34AM 4 A. MY UNDERSTANDING WAS THAT THAT CAME FROM SUNNY.

09:34AM 5 Q. I'LL ASK YOU TO LOOK NEXT AT TAB 5770, PLEASE.

09:35AM 6 A. I SEE IT.

09:35AM 7 Q. OKAY. AND IS 5770 AN EMAIL BETWEEN YOU AND DR. ROSENDORFF

09:35AM 8 AGAIN RELATING TO INFORMATION FLOW INTERNALLY AT THERANOS?

09:35AM 9 A. YES.

09:35AM 10 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5770.

09:35AM 11 MR. CAZARES: NO OBJECTION.

09:35AM 12 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

09:35AM 13 (GOVERNMENT'S EXHIBIT 5770 WAS RECEIVED IN EVIDENCE.)

09:35AM 14 BY MR. BOSTIC:

09:35AM 15 Q. SO, DR. PANDORI, THE INITIAL EMAIL ON THIS CHAIN IS FROM

09:35AM 16 ERIKA CHEUNG TO YOU AND THE SUBJECT IS QUICK QUESTION.

09:35AM 17 DO YOU SEE THAT?

09:35AM 18 A. YES.

09:35AM 19 Q. AND MS. CHEUNG TALKS ABOUT GOING TO A NORMANDY MEETING

09:35AM 20 THAT DAY, AND SHE SAYS THAT NOTICED THAT SOMEONE NAMED NISHIT

09:35AM 21 WAS REALLY OUT OF TOUCH WITH SOME OF THE ISSUES GOING ON IN

09:36AM 22 CLIA AND ELISA.

09:36AM 23 THEN SHE ASKED, "AM I ALLOWED TO DISCLOSE INFORMATION

09:36AM 24 ABOUT OUR PT TESTING AND ISSUES DOWNSTAIRS TO HIM?"

09:36AM 25 DO YOU SEE THAT?

09:36AM 1 A. I SEE THAT.

09:36AM 2 Q. AND YOU THEN FORWARDED THAT QUESTION TO DR. ROSENDORFF;

09:36AM 3 CORRECT?

09:36AM 4 A. CORRECT.

09:36AM 5 Q. AND YOU SAY IN YOUR EMAIL TO DR. ROSENDORFF THAT

09:36AM 6 MS. CHEUNG'S QUESTION BELOW MAY SPARK A SMALL DISCUSSION

09:36AM 7 BETWEEN US?

09:36AM 8 A. YES.

09:36AM 9 Q. WHY WAS -- WHY DID YOU THINK THAT MS. CHEUNG'S QUESTION

09:36AM 10 MIGHT REQUIRE DISCUSSION BETWEEN YOU AND DR. ROSENDORFF?

09:36AM 11 A. WELL, THIS WOULD BE A SITUATION WHERE A REPRESENTATIVE OF

09:36AM 12 CLIA WOULD BE TALKING ABOUT OUR ISSUES WITH A REPRESENTATIVE OF

09:36AM 13 A DIFFERENT PART OF THE COMPANY, AND WE KNEW THAT UPPER

09:36AM 14 MANAGEMENT MIGHT BE REALLY UPSET ABOUT THAT.

09:36AM 15 Q. AND WHEN YOU SAY, "UPPER MANAGEMENT," WHO ARE YOU

09:36AM 16 REFERRING TO?

09:36AM 17 A. ELIZABETH HOLMES AND SUNNY BALWANI.

09:36AM 18 Q. AS LABORATORY DIRECTOR, ARE THERE REASONS WHY YOU WOULD

09:36AM 19 WANT TO ENCOURAGE COMMUNICATION BETWEEN DEPARTMENTS LIKE THESE?

09:37AM 20 A. ABSOLUTELY. WHAT YOU'RE FACING IS A SITUATION WHERE YOU

09:37AM 21 HAVE A PROBLEM AND YOU'RE TRYING TO SOLVE IT.

09:37AM 22 WITHIN A NORMAL, NORMALLY OPERATING LAB, YOU WOULD NEED

09:37AM 23 ALL OF THE PEOPLE THAT ARE INVOLVED IN RUNNING LAB TESTS TO

09:37AM 24 WORK TOGETHER TO COME UP WITH A SOLUTION BECAUSE THEY WOULD

09:37AM 25 HAVE TO FOLLOW AN INVESTIGATIVE PROCESS TO TRY AND ASCERTAIN

09:37AM 1 THE PROBLEM, AND THEN YOU WOULD HAVE TO WORK TOGETHER TO TRY
09:37AM 2 AND ASCERTAIN A SOLUTION.

09:37AM 3 THAT COULD ONLY REALLY TRULY BE DONE IN A NORMALLY
09:37AM 4 OPERATING LABORATORY IF PEOPLE WORKED TOGETHER AND DISCUSSED
09:37AM 5 IT. IF ALL OF THOSE PEOPLE WERE GERMANE TO GENERATING THAT LAB
09:37AM 6 TEST RESULT, AND NISHIT WAS.

09:37AM 7 Q. I SEE.

09:37AM 8 SO DID YOU DISAGREE WITH THE DIRECTION AT THERANOS TO SILO
09:37AM 9 INFORMATION THIS WAY?

09:37AM 10 A. YES.

09:37AM 11 Q. OKAY. WE CAN TAKE THAT DOWN. THANK YOU, MS. WACHS.

09:37AM 12 DO YOU REMEMBER, DR. PANDORI, WE LOOKED PREVIOUSLY AT A
09:38AM 13 "WALL STREET JOURNAL" ARTICLE FROM SEPTEMBER OF 2013?

09:38AM 14 A. YES.

09:38AM 15 Q. AND YOU PREVIOUSLY TESTIFIED THAT THERE WERE STATEMENTS IN
09:38AM 16 THAT ARTICLE THAT YOU FOUND NOT TO BE TRUE BASED ON YOUR WORK
09:38AM 17 AT THERANOS; IS THAT RIGHT?

09:38AM 18 A. THAT'S RIGHT.

09:38AM 19 Q. WAS THAT THE ONLY TIME THAT THAT HAPPENED?

09:38AM 20 A. NO. IT HAPPENED ANOTHER TIME.

09:38AM 21 Q. I'LL ASK YOU TO TURN TO TAB 1599, PLEASE, IN YOUR BINDER.

09:38AM 22 A. OKAY.

09:38AM 23 Q. DO YOU HAVE THAT IN FRONT OF YOU?

09:38AM 24 A. IT STARTS WITH ONE DROP --

09:38AM 25 Q. YES. IS THIS A COPY OF AN ARTICLE IN "WIRED" MAGAZINE

09:38AM 1 THAT YOU REVIEWED DURING YOUR TIME WORKING AT THE COMPANY?

09:38AM 2 A. YES, THAT'S CORRECT.

09:38AM 3 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1599.

09:38AM 4 MR. CAZARES: OBJECTION. HEARSAY. DOUBLE

09:38AM 5 FOUNDATION.

09:38AM 6 MR. BOSTIC: YOUR HONOR, THIS IS NOT BEING OFFERED

09:38AM 7 FOR THE TRUTH.

09:39AM 8 THE COURT: WHAT'S ITS PURPOSE?

09:39AM 9 MR. BOSTIC: ITS PURPOSE IS SIMILAR TO 1106, TO SHOW

09:39AM 10 WHAT WAS IN THE PUBLIC REALM AT THE TIME REGARDING THERANOS,

09:39AM 11 AND IT ALSO PROVIDES THE FOUNDATION FOR A SUBSEQUENT

09:39AM 12 CONVERSATION THAT THIS WITNESS HAD WITH THE DEFENDANTS.

09:39AM 13 MR. CAZARES: SAME OBJECTIONS. AND NOTICE TO THE

09:39AM 14 PUBLIC IS NOT AT ISSUE IN THE CASE.

09:39AM 15 THE COURT: CAN YOU LAY A FOUNDATION AS TO WHAT, IF

09:39AM 16 ANYTHING, THIS DOCUMENT WHAT THE EFFECT OF THIS DOCUMENT HAD ON

09:39AM 17 THIS WITNESS?

09:39AM 18 MR. BOSTIC: YES, YOUR HONOR.

09:39AM 19 Q. DR. PANDORI, YOU SAID YOU READ THIS ARTICLE WHILE YOU WERE

09:39AM 20 WORKING AT THE COMPANY?

09:39AM 21 A. YES, I DID.

09:39AM 22 Q. WHEN YOU READ THE CONTENT OF THIS ARTICLE, AND I'M NOT

09:39AM 23 ASKING YOU ABOUT THE CONTENT RIGHT NOW OR WHAT IT IS, WHEN YOU

09:39AM 24 READ THE CONTENT, WHAT WAS YOUR REACTION?

09:39AM 25 A. WELL, I HAD A NEGATIVE REACTION TO THIS BECAUSE I'M NOW AN

09:39AM 1 EMPLOYEE OF THE COMPANY, AND THIS -- SO ANYTHING WRITTEN ABOUT
09:40AM 2 THE COMPANY REPRESENTS SOMETHING ABOUT ME AS WELL, BECAUSE I'M
09:40AM 3 A PART OF THIS.

09:40AM 4 AND I FELT THAT THERE WERE INACCURATE OR MISLEADING
09:40AM 5 STATEMENTS IN THIS, AND I THOUGHT THAT THAT, IN THE LONG RUN,
09:40AM 6 WOULD HAVE A NEGATIVE IMPACT ON THE COMPANY BECAUSE WE DON'T
09:40AM 7 WANT PEOPLE TO BELIEVE ONE THING BUT GET ANOTHER IN TERMS OF A
09:40AM 8 PRODUCT BECAUSE THAT WOULD HURT US IN THE LONG TERM AS A
09:40AM 9 COMPANY, OR SHORT TERM.

09:40AM 10 AND SO I REALLY WANTED -- WHEN I READ THIS, I THOUGHT IT'S
09:40AM 11 MORE IMPORTANT THAT WE TRY AND THEN CREATE A SITUATION WHERE
09:40AM 12 THE TRUE -- YOU KNOW, REALLY WHERE WE ARE AT WOULD BE WHAT
09:40AM 13 WOULD BE DISPLAYED TO THE PUBLIC RATHER THAN THE KIND OF
09:40AM 14 STATEMENTS THAT WERE MADE HERE.

09:40AM 15 Q. AND AFTER READING THIS ARTICLE AND HAVING THAT REACTION,
09:40AM 16 DID THAT THEN CAUSE YOU TO RAISE THOSE CONCERNS DIRECTLY TO
09:40AM 17 MR. BALWANI AND MS. HOLMES?

09:40AM 18 A. YES, I DID ACTUALLY RAISE THOSE CONCERNS TO BOTH OF THEM.

09:41AM 19 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1599
09:41AM 20 BASED ON THAT FOUNDATION.

09:41AM 21 MR. CAZARES: SAME OBJECTION.

09:41AM 22 THE COURT: I'M GOING TO SUSTAIN THE OBJECTION AS TO
09:41AM 23 THE DOCUMENT ITSELF.

09:41AM 24 YOU CAN INQUIRE ABOUT THINGS THAT WERE RAISED, HIS
09:41AM 25 CONCERNS, BUT THE ACTUAL DOCUMENT ITSELF, AT THIS POINT I'M

09:41AM 1 GOING TO SUSTAIN THE OBJECTION.

09:41AM 2 BY MR. BOSTIC:

09:41AM 3 Q. DR. PANDORI, YOU TESTIFIED THAT THERE WERE STATEMENTS IN
09:41AM 4 THE ARTICLE THAT YOU FOUND NOT TO BE CORRECT; IS THAT RIGHT?

09:41AM 5 A. THAT'S RIGHT.

09:41AM 6 Q. CAN YOU TELL US, GENERALLY SPEAKING, WHAT WERE THE TOPIC
09:41AM 7 OF THOSE STATEMENTS? WHAT WERE THEY ABOUT?

09:41AM 8 MR. CAZARES: OBJECTION. HEARSAY. FOUNDATION.

09:41AM 9 THE COURT: OVERRULED.

09:41AM 10 THE WITNESS: IN GENERAL, THEY WERE STATEMENTS ABOUT
09:41AM 11 THE CAPABILITY OF THE THERANOS LAB TESTING OPERATION.

09:41AM 12 BY MR. BOSTIC:

09:41AM 13 Q. AND WERE THEY ABOUT, FOR EXAMPLE, WHAT THE TECHNOLOGY
09:42AM 14 COULD DO?

09:42AM 15 A. RIGHT. YEAH.

09:42AM 16 SO THINGS ABOUT TURN-AROUND TIME OR WHAT TESTS MIGHT OR
09:42AM 17 MIGHT NOT BE AVAILABLE OR THEIR ACCURACY.

09:42AM 18 Q. LET'S BREAK THOSE UP IF WE COULD.

09:42AM 19 ON TURN-AROUND TIME, IF YOU SAW A DISCREPANCY THERE
09:42AM 20 BETWEEN WHAT THE ARTICLE SAID AND YOUR EXPERIENCE, WHAT WAS THE
09:42AM 21 DIFFERENCE?

09:42AM 22 A. THE DIFFERENCE WAS THAT --

09:42AM 23 MR. CAZARES: OBJECTION. HEARSAY. RELEVANCE. THE
09:42AM 24 WITNESS IS ALSO LOOKING AT THE ARTICLE WHILE THE QUESTION IS
09:42AM 25 BEING ASKED.

09:42AM 1 THE COURT: THANK YOU. OVERRULED.

09:42AM 2 YOU CAN ANSWER THE QUESTION.

09:42AM 3 BY MR. BOSTIC:

09:42AM 4 Q. WOULD YOU LIKE THE QUESTION AGAIN, DR. PANDORI?

09:42AM 5 A. NO.

09:42AM 6 THE AMOUNT OF TIME THAT WAS REPRESENTED IN THE ARTICLE

09:42AM 7 THAT INDICATED HOW LONG IT WOULD TAKE FOR US TO GENERATE A LAB

09:42AM 8 TEST RESULT WAS SHORTER THAN WHAT IT WAS ACTUALLY TAKING IN THE

09:42AM 9 LAB.

09:42AM 10 Q. SO, IN OTHER WORDS, THE ARTICLE EXAGGERATED THE SPEED OF

09:43AM 11 THE THERANOS TEST?

09:43AM 12 MR. CAZARES: OBJECTION. LEADING.

09:43AM 13 THE COURT: SUSTAINED.

09:43AM 14 BY MR. BOSTIC:

09:43AM 15 Q. WERE THERE OTHER ISSUES OR OTHER TOPICS BESIDES

09:43AM 16 TURN-AROUND TIME WHERE YOU THOUGHT THAT THERE WERE FALSE OR

09:43AM 17 MISLEADING STATEMENTS IN THE ARTICLE?

09:43AM 18 MR. CAZARES: OBJECTION. HEARSAY.

09:43AM 19 THE COURT: OVERRULED.

09:43AM 20 THE WITNESS: YES.

09:43AM 21 BY MR. BOSTIC:

09:43AM 22 Q. WHAT WERE THOSE OTHER TOPICS?

09:43AM 23 A. AM I ALLOWED TO LOOK AT THIS TO REFRESH MY MEMORY?

09:43AM 24 Q. WOULD LOOKING AT THE ARTICLE REFRESH YOUR RECOLLECTION?

09:43AM 25 A. IT WOULD, BUT THERE ARE A COUPLE OF ISSUES THAT I REMEMBER

09:43AM 1 OFF THE TOP OF MY HEAD.

09:43AM 2 Q. WHAT I'LL ASK YOU TO DO IS TAKE A MOMENT TO LOOK AT THE

09:43AM 3 ARTICLE, AND LET ME KNOW WHEN YOU'RE DONE, AND I'LL RE-ASK THE

09:43AM 4 QUESTION.

09:43AM 5 A. OKAY.

09:44AM 6 (PAUSE IN PROCEEDINGS.)

09:44AM 7 THE WITNESS: OKAY.

09:44AM 8 BY MR. BOSTIC:

09:44AM 9 Q. DID REVIEWING THE ARTICLE REFRESH YOUR MEMORY ABOUT SOME

09:44AM 10 OF THE OTHER TOPICS WHERE WHAT YOU SAW THAT YOU VIEWED AS FALSE

09:44AM 11 OR MISLEADING STATEMENTS?

09:44AM 12 A. YEAH, READING THIS REMINDED ME HOW I FELT WHEN I READ IT.

09:44AM 13 Q. SO WE TALKED ABOUT TURN-AROUND TIME ALREADY.

09:44AM 14 WHAT OTHER ISSUES DID YOU SEE WITH THIS ARTICLE?

09:44AM 15 A. WELL, ONE THING THAT STUCK OUT WAS THE MENTION OF THE

09:44AM 16 FERTILITY PANEL. AT THAT TIME WE DIDN'T OFFER THAT. AT LEAST

09:44AM 17 FROM THE CLIA PERSPECTIVE, WE DIDN'T HAVE QUALITY DATA THAT I

09:44AM 18 THINK LED US TO THINK THAT THAT IS SOMETHING THAT WE COULD

09:44AM 19 OFFER.

09:44AM 20 BUT THERE WERE STATEMENTS HERE ABOUT NOT CULTURING

09:45AM 21 BACTERIA OR VIRUSES AND USING GENETIC METHODOLOGIES, WHICH WAS

09:45AM 22 POSED AS A NOVEL MEANS OF PROTECTING PATHOGENS, BUT THAT'S AN

09:45AM 23 INCORRECT STATEMENT AS WELL.

09:45AM 24 THAT WAS -- THERE WAS NOTHING NOVEL BEING DONE IN THAT

09:45AM 25 REGARD AT THERANOS WITH REGARD TO DETECTING PATHOGENS THAT WAY.

09:45AM 1 THE USE OF DNA TO DETECT PATHOGENS --

09:45AM 2 MR. CAZARES: OBJECTION. 702.

09:45AM 3 THE COURT: WHY DON'T YOU ASK A QUESTION.

09:45AM 4 MR. BOSTIC: SURE.

09:45AM 5 Q. DR. PANDORI, WHAT WAS YOUR -- WHAT HAD YOU OBSERVED THAT
09:45AM 6 MADE YOU UNDERSTAND THAT THAT WAS NOT A NOVEL THING THAT
09:45AM 7 THERANOS WAS DOING?

09:45AM 8 MR. CAZARES: SAME OBJECTION. 702.

09:45AM 9 THE COURT: OVERRULED.

09:45AM 10 THE WITNESS: WELL, THAT STATEMENT, IF YOU GO TO A
09:45AM 11 PEER REVIEWED LITERATURE AND THE BODY OF KNOWLEDGE THAT WE HAVE
09:45AM 12 WITH REGARD TO DIAGNOSTIC TESTING, FOR EXAMPLE, PCR, WHICH IS A
09:45AM 13 WAY TO USE -- TO DO A DNA BASED DIAGNOSTIC, INSTEAD OF CULTURE,
09:46AM 14 WHICH WAS INVENTED IN 1985, AND SHORTLY THEREAFTER WAS ADOPTED
09:46AM 15 TO DETECT PATHOGENS.

09:46AM 16 IN THE LABORATORY THAT I WORKED PRIOR TO THIS AND OTHER
09:46AM 17 LABORATORIES I WORKED, WE USED DNA METHODOLOGIES TO DETECT
09:46AM 18 VIRUSES AND BACTERIA. WE WOULD DO OVER 100,000 TIMES A YEAR.

09:46AM 19 MR. CAZARES: OBJECTION. INSPECTOR.

09:46AM 20 THE COURT: SUSTAINED. YOU CAN ASK ANOTHER
09:46AM 21 QUESTION.

09:46AM 22 BY MR. BOSTIC:

09:46AM 23 Q. SO, DR. PANDORI, SO FAR WE HAVE TALKED ABOUT TURN-AROUND
09:46AM 24 TIME AND THE STATUS OF THE FERTILITY PANEL AT THERANOS AND
09:46AM 25 WHETHER THERANOS'S DNA METHODS WERE NOVEL AT THE TIME.

09:46AM 1 IS THAT CORRECT SO FAR?

09:46AM 2 A. SO FAR THAT WAS A SUMMARY OF WHAT WE DISCUSSED.

09:46AM 3 Q. WERE THERE OTHER TOPICS IN THE ARTICLE THAT YOU FELT WERE
09:46AM 4 ADDRESSED INADEQUATELY OR MISLEADING?

09:46AM 5 A. THE -- THERE'S AN IMPLICATION HERE THAT TESTS WERE
09:47AM 6 ACCURATE OR MORE ACCURATE, AND THAT WAS A PROBLEM BECAUSE THAT
09:47AM 7 WASN'T AN OBSERVATION THAT WAS BEING MADE EMPIRICALLY IN THE
09:47AM 8 LABORATORY.

09:47AM 9 MR. CAZARES: OBJECTION. 702. MOVE TO STRIKE.

09:47AM 10 THE COURT: DO YOU WANT TO LAY A FOUNDATION?

09:47AM 11 MR. BOSTIC: SURE.

09:47AM 12 Q. SO YOU SAID THAT THE ARTICLE IMPLIED OR SAID THAT THE
09:47AM 13 THERANOS TESTING WAS MORE ACCURATE; IS THAT CORRECT?

09:47AM 14 A. CORRECT.

09:47AM 15 Q. AND BASED ON YOUR OBSERVATIONS WHEN YOU WERE AT THE
09:47AM 16 COMPANY, AND LIMITED TO ONLY WHAT YOU SAW WHILE YOU WERE THERE,
09:47AM 17 WAS THAT TRUE OR NOT?

09:47AM 18 MR. CAZARES: OBJECTION. 702.

09:47AM 19 THE COURT: BASED ONLY ON HIS OBSERVATIONS?

09:47AM 20 MR. BOSTIC: YES, YOUR HONOR.

09:47AM 21 THE COURT: YOU CAN ANSWER THE QUESTION BASED ON
09:47AM 22 YOUR OBSERVATIONS.

09:47AM 23 THE WITNESS: BASED SOLELY ON MY OBSERVATIONS,
09:47AM 24 THERE'S NO REASON AT ALL TO BELIEVE THAT THESE TESTS WERE MORE
09:47AM 25 ACCURATE THAN TESTS THAT ALREADY EXISTED.

09:47AM 1 BY MR. BOSTIC:

09:47AM 2 Q. WERE THERE STATEMENTS IN THE ARTICLE ABOUT HOW MANY TESTS
09:47AM 3 THERANOS COULD PERFORM FROM A DROP OF BLOOD?

09:48AM 4 MR. CAZARES: OBJECTION. LEADING AND HEARSAY AGAIN.

09:48AM 5 THE COURT: I'LL SUSTAIN THE LEADING QUESTION.

09:48AM 6 BY MR. BOSTIC:

09:48AM 7 Q. DR. PANDORI, DO YOU RECALL ANY OTHER INSTANCES IN THE
09:48AM 8 ARTICLE WHERE YOU THOUGHT THAT THE ABILITIES OF THE THERANOS
09:48AM 9 TECHNOLOGY WERE MISREPRESENTED?

09:48AM 10 MR. CAZARES: OBJECTION. LEADING.

09:48AM 11 THE COURT: OVERRULED.

09:48AM 12 THE WITNESS: WELL, THE USE OF THE WORD "PANEL" IS
09:48AM 13 AN IMPLICATION WHEN SOMEBODY GOES AND GETS A PANEL, AS MANY
09:48AM 14 PEOPLE MAY KNOW, THAT WOULD BE ASKING FOR A NUMBER OF
09:48AM 15 LABORATORY TESTS SIMULTANEOUSLY, AND IT WASN'T OUR CURRENT
09:48AM 16 CAPABILITY TO BE ABLE TO RUN MANY, MANY -- SEVERAL LAB TESTS ON
09:48AM 17 ONE SPECIMEN ON THERANOS TECHNOLOGY AT THAT TIME.

09:48AM 18 BY MR. BOSTIC:

09:48AM 19 Q. AND WHAT DID THE -- WHAT DO YOU RECALL THE ARTICLE SAYING
09:48AM 20 THAT WAS CONSISTENT OR INCONSISTENT WITH THAT?

09:48AM 21 MR. CAZARES: OBJECTION. HEARSAY AND LEADING.

09:48AM 22 MR. BOSTIC: YOUR HONOR, THIS MIGHT BENEFIT FROM A
09:49AM 23 BRIEF SIDE-BAR DISCUSSION. THE GOVERNMENT IS NOT OFFERING ANY
09:49AM 24 OF THIS CONTENT FOR THE TRUTH.

09:49AM 25 THE COURT: UNDERSTOOD. THE OBJECTION IS OVERRULED.

09:49AM 1 YOU CAN ANSWER THE QUESTION.

09:49AM 2 THE WITNESS: CAN YOU RE-ASK THE QUESTION?

09:49AM 3 BY MR. BOSTIC:

09:49AM 4 Q. YES. SO LET ME GO BACK ONE QUESTION.

09:49AM 5 YOU WERE TELLING US ABOUT ANOTHER INSTANCE WHERE THE
09:49AM 6 ABILITIES OF THE THERANOS TECHNOLOGY YOU THOUGHT WERE
09:49AM 7 MISREPRESENTED IN THE ARTICLE.

09:49AM 8 CAN YOU SUMMARIZE THAT AGAIN FOR US?

09:49AM 9 MR. CAZARES: OBJECTION. IT CALLS FOR A NARRATIVE.
09:49AM 10 ASKED AND ANSWERED.

09:49AM 11 THE COURT: OVERRULED.

09:49AM 12 THE WITNESS: YOU WANT ME TO SUMMARIZE MY TROUBLE
09:49AM 13 WITH THE ARTICLE? WOULD YOU LIKE ME TO BREAK THEM DOWN
09:49AM 14 INDIVIDUALLY, OR JUST GIVE YOU A GENERAL ASSESSMENT OF IT?

09:49AM 15 BY MR. BOSTIC:

09:49AM 16 Q. I THINK JUST THE LAST TOPIC YOU WERE DISCUSSING ABOUT THE
09:49AM 17 BREADTH OF TESTS OR THE NUMBER OF TESTS THAT COULD BE
09:49AM 18 CONDUCTED?

09:49AM 19 A. WELL, THE IMPLICATION OF THE ARTICLE IS THAT PEOPLE WILL
09:49AM 20 BE ABLE TO GET A PANEL OF TESTS PERFORMED ON A SINGLE
09:49AM 21 FINGERSTICK, BUT THAT WAS NOT THE CASE IN MY TIME THERE.

09:49AM 22 Q. INSTEAD, WHAT WERE THE CAPABILITIES OF THE TECHNOLOGY AS
09:50AM 23 FAR AS HOW MANY TESTS COULD BE DONE ON A SINGLE SAMPLE?

09:50AM 24 A. WE HAD A LOT OF DIFFICULT EVEN RUNNING ONE TEST ON ONE
09:50AM 25 SAMPLE.

09:50AM 1 Q. ON THAT SAME TOPIC, IN YOUR EXPERIENCE WAS THE THERANOS
09:50AM 2 TECHNOLOGY CAPABLE OF RUNNING FOLLOW-ON TESTS ON BLOOD SAMPLES?
09:50AM 3 A. NOT IN THE TIME THAT I WAS THERE.
09:50AM 4 Q. AND CAN YOU EXPLAIN WHAT THAT MEANS? WHAT IS A FOLLOW-ON
09:50AM 5 TEST?
09:50AM 6 A. WELL, YOU TAKE A SAMPLE FROM A HUMAN BEING, IT COMES TO
09:50AM 7 THE LAB, YOU GET A TEST RESULT, THAT TEST RESULT WOULD CAUSE
09:50AM 8 YOU TO WANT TO RUN ANOTHER IN REFLUX TO THAT.
09:50AM 9 Q. AND WAS THAT TOPIC ADDRESSED IN THE "WIRED" ARTICLE?
09:50AM 10 A. I DON'T RECALL.
09:51AM 11 MR. CAZARES: MOVE TO STRIKE THE PRIOR STATEMENTS
09:51AM 12 REGARDING THE IMPRESSION OF THE WITNESS ABOUT THE ARTICLE ON
09:51AM 13 THAT TOPIC.
09:51AM 14 MR. BOSTIC: YOUR HONOR, IF I COULD BE ALLOWED TO
09:51AM 15 REFRESH THE WITNESS ON THAT?
09:51AM 16 THE COURT: YES.
09:51AM 17 BY MR. BOSTIC:
09:51AM 18 Q. DR. PANDORI, CAN I DIRECT YOU TO PAGE 2 OF EXHIBIT 1599?
09:51AM 19 A. YES.
09:51AM 20 Q. AND ABOUT TWO-THIRDS OF THE WAY DOWN THE PAGE, IF YOU
09:51AM 21 COULD REVIEW THAT AND THEN LET ME KNOW WHEN YOU'RE FINISHED?
09:51AM 22 A. YEAH, I SEE THAT STATEMENT.
09:51AM 23 Q. AND DO YOU SEE A STATEMENT THAT RELATES TO THERANOS'S
09:51AM 24 ABILITY, OR NOT --
09:51AM 25 THE COURT: WE JUST HAVE TO GO ONE AT A TIME,

09:51AM 1 PLEASE, FOR THE SAKE OF OUR COURT REPORTER, PLEASE.

09:51AM 2 WHY DON'T YOU ASK THE QUESTION AGAIN, MR. BOSTIC.

09:51AM 3 MR. BOSTIC: SURE.

09:51AM 4 Q. THE QUESTION WAS, NOW THAT YOU'VE HAD A CHANCE TO REVIEW
09:51AM 5 AND REFRESH YOUR RECOLLECTION, DO YOU RECALL A STATEMENT IN THE
09:51AM 6 ARTICLE ADDRESSING WHETHER THERANOS WAS CAPABLE OF DOING
09:52AM 7 FOLLOW-ON TESTING --

09:52AM 8 MR. CAZARES: OBJECTION. LEADING.

09:52AM 9 THE COURT: HE HADN'T FINISHED HIS QUESTION AGAIN.

09:52AM 10 I'M SORRY. COULD I TROUBLE YOU, MR. BOSTIC, TO ASK YOUR
09:52AM 11 QUESTION IN TOTAL AGAIN, PLEASE.

09:52AM 12 BY MR. BOSTIC:

09:52AM 13 Q. SURE.

09:52AM 14 THE QUESTION WAS NOW THAT YOU'VE REVIEWED THE ARTICLE AND
09:52AM 15 REFRESHED YOUR RECOLLECTION, DO YOU RECALL ANY LANGUAGE IN THE
09:52AM 16 ARTICLE ADDRESSING WHETHER THERANOS TECHNOLOGY COULD PERFORM
09:52AM 17 FOLLOW-ON TESTING LIKE WE'VE BEEN DISCUSSING?

09:52AM 18 A. YES.

09:52AM 19 MR. CAZARES: THE OBJECTION WAS LEADING.

09:52AM 20 THE COURT: OVERRULED. YOU CAN ANSWER THE QUESTION.

09:52AM 21 THE WITNESS: YES, I RECALL THAT.

09:52AM 22 BY MR. BOSTIC:

09:52AM 23 Q. AND BASED ON YOUR REVIEW, WHEN THIS ARTICLE CAME OUT IN
09:52AM 24 MARCH 2014, WAS THE ARTICLE ACCURATE IN ITS REPRESENTATIONS
09:52AM 25 ABOUT WHETHER THERANOS COULD DO FOLLOW-ON TESTING?

09:52AM 1 A. NO.

09:52AM 2 Q. YOU SAID THAT THIS ARTICLE RAISED CONCERNS IN YOUR MIND

09:52AM 3 AND THAT YOU EVENTUALLY HAD A CONVERSATION WITH MR. BALWANI

09:53AM 4 ABOUT IT; IS THAT CORRECT?

09:53AM 5 A. AND -- YES.

09:53AM 6 Q. DESCRIBE FOR US HOW THAT CONVERSATION CAME TO HAPPEN?

09:53AM 7 A. I WAS ASKED TO COME TO ELIZABETH HOLMES'S OFFICE, AND

09:53AM 8 SUNNY BALWANI AND ELIZABETH HOLMES WERE IN THE OFFICE, AND I

09:53AM 9 SAT DOWN ACROSS FROM THEM.

09:53AM 10 Q. WERE YOU TOLD WHY YOU WERE ASKED TO GO TO THEIR OFFICE?

09:53AM 11 WAS THIS A SCHEDULED MEETING?

09:53AM 12 A. NO, IT WAS NOT.

09:53AM 13 Q. AND WHAT HAPPENED WHEN YOU FIRST ARRIVED AT THE OFFICE?

09:53AM 14 WELL, FIRST, LET ME ASK, WAS ANYONE ELSE PRESENT AT THIS

09:53AM 15 MEETING BESIDES YOU, MS. HOLMES, AND MR. BALWANI?

09:53AM 16 A. NO.

09:53AM 17 Q. SO WHAT WAS THE CONVERSATION ONCE YOU ARRIVED AT THE

09:53AM 18 OFFICE?

09:53AM 19 A. THAT I HAD A NEGATIVE ATTITUDE ABOUT THE COMPANY.

09:53AM 20 Q. LET ME ASK FIRST, DO YOU AGREE WITH THAT AROUND THIS TIME?

09:53AM 21 DID YOU OR HAD YOU COME TO HAVE A NEGATIVE ATTITUDE ABOUT

09:53AM 22 THERANOS?

09:53AM 23 A. I HAD A NEGATIVE ATTITUDE ABOUT THERANOS AS A DIAGNOSTIC

09:54AM 24 LABORATORY, AND I FELT THAT THERE WERE A LOT OF VERY, VERY MANY

09:54AM 25 PROBLEMS WITH REGARD TO QUALITY OF THE RESULTS THAT WERE

09:54AM 1 GENERATED AT THERANOS AS A DIAGNOSTIC LABORATORY.

09:54AM 2 Q. AND HAD THAT BEEN YOUR ATTITUDE DURING YOUR ENTIRE TIME AT
09:54AM 3 THE COMPANY? HAD YOU COME IN WITH THAT KIND OF ATTITUDE ABOUT
09:54AM 4 THERANOS?

09:54AM 5 A. I CAME IN WITH AN OBJECTIVE ATTITUDE ABOUT WHETHER OR NOT
09:54AM 6 THAT WAS THE CASE.

09:54AM 7 Q. WHEN YOU STARTED AT THERANOS, WERE YOU EXCITED ABOUT THE
09:54AM 8 PROSPECT OF WORKING THERE?

09:54AM 9 A. ABSOLUTELY. THERE WAS AN OPPORTUNITY FOR THIS TECHNOLOGY
09:54AM 10 TO HAVE A LARGE IMPACT ON INDIVIDUAL HEALTH, BUT PUBLIC HEALTH
09:54AM 11 AS WELL.

09:54AM 12 Q. AND THE MEETING THAT WE'RE TALKING ABOUT WITH MS. HOLMES
09:54AM 13 AND MR. BALWANI, WHEN DID THAT TAKE PLACE?

09:54AM 14 A. ON OR AROUND MY BIRTHDAY IN MAY, WHICH WAS MAY 19TH. I
09:54AM 15 DON'T KNOW. IT WAS PLUS OR MINUS ONE DAY OF THAT, I THINK.

09:54AM 16 Q. SO TELL US MORE ABOUT THAT CONVERSATION. THE TOPIC
09:55AM 17 APPARENTLY WAS YOUR, I GUESS THEIR WORDS, BAD ATTITUDE ABOUT
09:55AM 18 THERANOS.

09:55AM 19 HOW DID YOU RESPOND?

09:55AM 20 A. WELL, I SAID, THERE WERE JUST A LOT OF FOUNDATIONAL
09:55AM 21 PROBLEMS. WE HAD PROBLEMS WITH QUALITY, BUT THAT BEING ABLE TO
09:55AM 22 TALK TO ONE ANOTHER WAS AN ISSUE, AND IT WAS VERY DIFFICULT FOR
09:55AM 23 US TO SOLVE PROBLEMS THERE IN THAT ENVIRONMENT.

09:55AM 24 IT WASN'T AN ENVIRONMENT WHERE WE COULD APPLY NORMAL
09:55AM 25 LABORATORY PROCEDURE TO SOLVING PROBLEMS BECAUSE THE LAB

09:55AM 1 DIRECTORS WEREN'T NECESSARILY THE ULTIMATE DECISION MAKERS IN
09:55AM 2 THIS CASE.

09:55AM 3 AND THE LABS WHERE I WORKED AS THE PUBLIC HEALTH LAB
09:55AM 4 DIRECTOR, THIS WOULD BE LIKE ASKING THE MAYOR OR THE BOARD OF
09:55AM 5 DIRECTORS OR SOMETHING TO PLAY A ROLE IN SOLVING PROBLEMS WITH
09:55AM 6 THE QUALITY AT THE LAB, AND THAT WAS A SIGNIFICANT PROBLEM.

09:55AM 7 BUT ONE OF THE THINGS WAS THAT I HAD SAID TO PRODUCT
09:55AM 8 MANAGERS DURING A CALL WITH SALES, I SAID WHEN --

09:56AM 9 MR. CAZARES: OBJECTION. NONRESPONSIVE.

09:56AM 10 THE COURT: SUSTAINED. YOU CAN ASK ANOTHER
09:56AM 11 QUESTION.

09:56AM 12 BY MR. BOSTIC:

09:56AM 13 Q. I DO WANT TO HEAR ABOUT THAT, BUT LET ME ASK YOU FIRST ON
09:56AM 14 THAT TOPIC, WHEN YOU RAISED YOUR CONCERNS ABOUT QUALITY ISSUES
09:56AM 15 AT THE COMPANY AND THE LEVEL OF COMMUNICATION, WAS MR. BALWANI
09:56AM 16 RECEPTIVE TO THOSE CONCERNS AT THAT TIME AT THIS MAY 2014
09:56AM 17 MEETING?

09:56AM 18 A. NO.

09:56AM 19 Q. WHAT MAKES YOU SAY THAT?

09:56AM 20 A. WELL, I SAID TO ELIZABETH AND SUNNY, I SAID WHAT WE NEED
09:56AM 21 TO DO IS HAVE REGULAR MEETINGS BETWEEN THE SALES, THE PRODUCT
09:56AM 22 MANAGERS, MANAGEMENT, AND THE LAB DIRECTORS, BECAUSE THE LAB
09:56AM 23 DIRECTORS KNOW WHAT TESTS ARE VALIDATED AND HAVE QUALITY AND
09:56AM 24 WHICH ONES DO NOT, THAT WAY THE SALESPeOPLE CAN HAVE THAT SAME
09:56AM 25 KNOWLEDGE SO THAT WHEN THEY'RE IN THE FIELD, WE'RE ALL ON THE

09:56AM 1 SAME PAGE WITH REGARD TO WHAT WORKS AND WHAT DOESN'T.

09:56AM 2 I SAID I THINK WE SHOULD HAVE REGULAR MEETINGS ABOUT THIS.

09:57AM 3 AND SUNNY'S RESPONSE WAS THAT WILL NEVER HAPPEN.

09:57AM 4 Q. WHAT, IF ANYTHING, DID THAT CONVERSATION HAVE TO DO WITH

09:57AM 5 WHAT YOU HAD READ IN THE PRESS ABOUT THERANOS?

09:57AM 6 A. WHAT WAS THE FIRST PART OF THAT QUESTION?

09:57AM 7 Q. SURE.

09:57AM 8 DID YOUR CONVERSATION WITH MR. BALWANI AND MS. HOLMES HAVE

09:57AM 9 ANYTHING TO DO WITH WHAT YOU HAD READ IN THE PRESS ABOUT

09:57AM 10 THERANOS?

09:57AM 11 A. YEAH. WELL, THE "WIRED" ARTICLE WAS A CATALYST FOR THIS,

09:57AM 12 IF YOU WILL.

09:57AM 13 Q. HOW SO?

09:57AM 14 A. WELL, WHEN I SAW THAT -- LIKE I SAID, WHEN I WAS WORKING

09:57AM 15 THERE, THERE WERE A LOT OF MISREPRESENTATIONS ABOUT OUR

09:57AM 16 CAPABILITIES, AND I'M PART OF THIS NOW, SO YOU'RE NOT ONLY

09:57AM 17 MISREPRESENTING WHAT THERANOS CAN DO, YOU'RE MISREPRESENTING

09:57AM 18 WHAT I'M A PART OF.

09:57AM 19 SO THERE'S HARM THAT CAN COME FROM MAKING THOSE

09:57AM 20 MISREPRESENTATIONS, AND I, I WAS VERY UPSET ABOUT THAT.

09:57AM 21 Q. WHEN YOU PROPOSED A SOLUTION TO THAT PROBLEM, YOU SAID

09:57AM 22 THAT MR. BALWANI HAD A RESPONSE, AND WHAT WAS THAT?

09:58AM 23 A. THAT WILL NEVER HAPPEN.

09:58AM 24 Q. IN THAT MOMENT DID MS. HOLMES PROVIDE YOU WITH ANY

09:58AM 25 RESPONSE AT ALL TO YOUR SUGGESTION?

09:58AM 1 A. MS. HOLMES SAID TO ME, IT SEEMS LIKE YOU'RE UNHAPPY
09:58AM 2 WORKING IN THE CLIA LABORATORY; MAYBE YOU WOULD BE HAPPIER IF
09:58AM 3 WE HAD YOU WORKING ON DIFFERENT PRODUCTS AT THERANOS, MAYBE IN
09:58AM 4 THE NUCLEIC ACID DIVISION, WHICH IS A TEST DEVELOPMENT AREA
09:58AM 5 THAT INVOLVES USING DNA BASED DETECTION OF ORGANISMS.
09:58AM 6 Q. AND IN YOUR MIND WAS THAT AN ACCEPTABLE SOLUTION TO THE
09:58AM 7 CONCERNS YOU WERE RAISING?
09:58AM 8 A. THAT IS NOT A SOLUTION TO THE CONCERNS THAT I WAS RAISING
09:58AM 9 AT ALL.
09:58AM 10 Q. WAS THERE ANY OTHER CONTENT IN THAT MEETING THAT STANDS
09:58AM 11 OUT IN YOUR MIND?
09:58AM 12 A. NO.
09:58AM 13 Q. WHAT WAS THE OUTCOME OF THAT MEETING? DID YOU MAKE ANY
09:58AM 14 DECISIONS AFTERWARDS?
09:58AM 15 A. WELL, I MADE A DECISION WHILE I WAS SEATED THAT I WOULD
09:58AM 16 QUIT THE COMPANY.
09:59AM 17 Q. AND DID YOU, IN FACT, QUIT THE COMPANY?
09:59AM 18 A. I DID.
09:59AM 19 Q. WHEN DID YOU QUIT THE COMPANY?
09:59AM 20 A. FIVE MINUTES LATER.
09:59AM 21 Q. AND WHAT WAS YOUR REASON FOR ENDING YOUR EMPLOYMENT WITH
09:59AM 22 THERANOS?
09:59AM 23 A. WELL, THE TECHNOLOGY WASN'T ANYWHERE NEAR WHAT I THOUGHT
09:59AM 24 IT WAS. IT WASN'T -- THE EDISONS DIDN'T WORK VERY WELL, AND
09:59AM 25 THAT WAS SOMETHING THAT WAS BUILT AT THERANOS TO MY KNOWLEDGE,

09:59AM 1 BUT THEY WORKED VERY, VERY POORLY. THEY GENERATED -- THEY
09:59AM 2 FAILED VERY, VERY, VERY OFTEN.

09:59AM 3 THERE WAS NO THERANOS TECHNOLOGY FOR DOING CHEMISTRY. THE
09:59AM 4 ONLY WAY THAT COULD BE DONE IS ON A HACKED MACHINE THAT WAS
09:59AM 5 BUILD BY AN FDA APPROVED COMPANY -- A COMPANY THAT MADE FDA
09:59AM 6 CLEARED EQUIPMENT.

09:59AM 7 THERE WAS NO TECHNOLOGY TO DETECT ORGANISMS USING DNA THAT
09:59AM 8 WAS NOVEL OR PUT INTO PLACE THAT WAS -- IF IT WAS NOVEL OR ANY
09:59AM 9 BETTER OR ANY DIFFERENT THAN ANY PREVIOUS TECHNOLOGY.

10:00AM 10 I COULDN'T APPLY MY NORMAL SKILLS AS A LAB DIRECTOR TO
10:00AM 11 SOLVE PROBLEMS AT THERANOS BECAUSE TALKING TO PEOPLE WAS
10:00AM 12 DIFFICULT ACROSS DIVISIONS OR FROM DIFFERENT ASPECTS OF THE
10:00AM 13 COMPANY.

10:00AM 14 MY DECISIONS, OR DR. ROSENDORFF'S DECISION AS LAB
10:00AM 15 DIRECTORS, ALL HAD TO BE VETTED BY UPPER MANAGEMENT, WHICH IS A
10:00AM 16 REALLY, REALLY FOREIGN CONCEPT TO ME AS A LAB DIRECTOR.

10:00AM 17 AND STATEMENTS WERE BEING MADE THAT MISREPRESENTED THE --

10:00AM 18 MR. CAZARES: OBJECTION. CALLS FOR HEARSAY.

10:00AM 19 THE COURT: SUSTAINED AS TO THAT WITHOUT FOUNDATION.

10:00AM 20 BY MR. BOSTIC:

10:00AM 21 Q. BESIDES THOSE OUTSIDE STATEMENTS, WERE THERE OTHER ISSUES
10:00AM 22 THAT YOU HAVEN'T TALKED ABOUT YET THAT CAUSED YOU TO LEAVE THE
10:00AM 23 COMPANY, OR HAVE WE CAPTURED ALL OF THEM?

10:00AM 24 A. I THINK WE'VE PRETTY MUCH CAPTURED ALL OF THEM.

10:00AM 25 I MEAN, IT WAS SUMMARIZED BY WHEN I MADE A SUGGESTION,

10:01AM 1 WHICH I THOUGHT WAS PRETTY BASIC AND FAIRLY FUNDAMENTAL AND
10:01AM 2 RATHER NONCONTROVERSIAL, ABOUT LETTING THE LAB DIRECTORS PLAY A
10:01AM 3 ROLE IN SHARING INFORMATION WITH PRODUCT AVAILABILITY, WHEN
10:01AM 4 THAT WAS DEEMED NO WAY, I THOUGHT THIS IS CRAZY. WHY WOULD I
10:01AM 5 WANT TO WORK HERE?

10:01AM 6 Q. WHEN YOU TENDERED YOUR RESIGNATION, DID MR. BALWANI ASK
10:01AM 7 YOU TO STAY AND REMAIN AT THE COMPANY?

10:01AM 8 A. NO.

10:01AM 9 Q. DID YOU HAVE ANY CONVERSATION WITH MR. BALWANI AFTER THE
10:01AM 10 CONVERSATION THAT WE JUST TALKED ABOUT WHERE HE SAID THAT THOSE
10:01AM 11 MEETINGS WOULD NEVER HAPPEN?

10:01AM 12 A. I DON'T RECALL EVER HAVING A CONVERSATION WITH MR. BALWANI
10:01AM 13 AGAIN AFTER THAT.

10:01AM 14 MR. BOSTIC: A MOMENT, YOUR HONOR?

10:01AM 15 THE COURT: YES.

10:01AM 16 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

10:01AM 17 MR. BOSTIC: NO FURTHER QUESTIONS AT THIS TIME.

10:02AM 18 THANK YOU, DR. PANDORI.

10:02AM 19 THE COURT: CROSS-EXAMINATION?

10:02AM 20 MR. CAZARES: YES, YOUR HONOR. THANK YOU.

10:03AM 21 MAY I APPROACH THE WITNESS, YOUR HONOR?

10:03AM 22 THE COURT: YES.

10:03AM 23 MR. CAZARES: (HANDING.)

10:03AM 24 AND, YOUR HONOR, MAY I APPROACH THE COURT?

10:03AM 25 THE COURT: YES.

10:03AM 1 MR. CAZARES: (HANDING.)

10:03AM 2 YOUR HONOR, MAY I REMOVE MY MASK?

10:03AM 3 THE COURT: YES.

10:03AM 4 MR. CAZARES: THANK YOU VERY MUCH.

10:03AM 5 **CROSS-EXAMINATION**

10:03AM 6 BY MR. CAZARES:

10:03AM 7 Q. GOOD MORNING, DR. PANDORI.

10:04AM 8 MY NAME IS STEVE CAZARES, AND I REPRESENT MR. BALWANI.

10:04AM 9 A. GOOD MORNING.

10:04AM 10 Q. AND I HAVE A FEW QUESTIONS FOR YOU, SIR.

10:04AM 11 A. YES. THANK YOU.

10:04AM 12 Q. AND JUST TO REVERT BACK TO THE BEGINNING IN THE TIME
10:04AM 13 PERIOD WHEN YOU FIRST STARTED TO WORK AT THERANOS IN LATE 2013.

10:04AM 14 DO YOU REMEMBER THAT TIME PERIOD?

10:04AM 15 A. YES.

10:04AM 16 Q. OKAY. AND YOU HAD INDICATED THAT YOU BECAME AWARE OF
10:04AM 17 THERANOS AND MAYBE YOU DID SOME INTERNET RESEARCH BEFORE
10:04AM 18 APPLYING FOR A JOB; IS THAT RIGHT?

10:04AM 19 A. YES.

10:04AM 20 Q. AND THAT'S BASICALLY HOW YOU CAME TO BE INTRODUCED TO
10:04AM 21 THERANOS; IS THAT CORRECT?

10:04AM 22 A. CORRECT.

10:04AM 23 Q. AND YOU HAD TESTIFIED ON DIRECT THAT WHEN YOU APPLIED, YOU
10:04AM 24 WEREN'T -- YOU DIDN'T RECALL EXACTLY WHAT POSITION YOU HAD
10:04AM 25 APPLIED FOR; IS THAT RIGHT?

10:04AM 1 A. YEAH. I BELIEVE THAT'S CORRECT.

10:04AM 2 Q. BUT IT WAS SOME SORT OF MANAGEMENT DECISION?

10:04AM 3 A. YES.

10:04AM 4 Q. WAS THAT YOUR INTENTION?

10:04AM 5 A. I ASSUME SO.

10:04AM 6 Q. OKAY. BECAUSE PREVIOUSLY YOU HAD HELD SENIOR MANAGEMENT

10:04AM 7 POSITIONS IN PUBLIC LABORATORIES; CORRECT?

10:05AM 8 A. CORRECT.

10:05AM 9 Q. AND BOTH IN SAN FRANCISCO?

10:05AM 10 A. IN SAN FRANCISCO AND PRIOR TO THERANOS.

10:05AM 11 Q. CORRECT.

10:05AM 12 BUT YOU WEREN'T THE ACTUAL LAB DIRECTOR IN SAN FRANCISCO;

10:05AM 13 IS THAT CORRECT?

10:05AM 14 A. THAT'S INCORRECT.

10:05AM 15 Q. YOU WERE THE LAB DIRECTOR?

10:05AM 16 A. I WAS.

10:05AM 17 Q. OKAY. AND YOU WERE LOOKING FOR A SIMILAR POSITION AT

10:05AM 18 THERANOS; CORRECT?

10:05AM 19 A. SIMILAR.

10:05AM 20 Q. OKAY. IN THE BINDERS THAT YOU HAVE THERE IN FRONT OF YOU

10:05AM 21 WITHIN VOLUME 2 -- WELL, ACTUALLY NO. LET ME GRAB -- WITHIN

10:06AM 22 THE SECOND OF THE VOLUMES YOU SHOULD HAVE A TAB MARKED 20478.

10:06AM 23 PROBABLY NEAR THE BACK OF THAT SECOND VOLUME.

10:06AM 24 A. 20478.

10:06AM 25 I SEE IT.

10:06AM 1 Q. ARE WE THERE? OKAY.

10:06AM 2 SO 20478, IF YOU LOOK AT THE TOP OF THE PAGE, IT LOOKS
10:06AM 3 LIKE IT APPEARS TO BE AN EMAIL FROM A MONA RAMAMURTHY TO
10:06AM 4 MR. BALWANI.

10:06AM 5 DO YOU SEE THAT?

10:06AM 6 A. I SEE IT.

10:06AM 7 Q. AND DATED APPROXIMATELY OCTOBER 20, 2013.

10:06AM 8 DO YOU SEE IT?

10:06AM 9 A. I SEE IT.

10:06AM 10 Q. OKAY. BUT FURTHER DOWN IN THE MIDDLE OF THAT FIRST PAGE
10:06AM 11 THERE'S AN EMAIL FROM YOURSELF TO MS. RAMAMURTHY.

10:06AM 12 DO YOU SEE THAT?

10:06AM 13 A. I SEE IT.

10:06AM 14 Q. AND MS. RAMAMURTHY WAS IN THE HR DEPARTMENT AT THERANOS;
10:06AM 15 CORRECT?

10:07AM 16 A. YES.

10:07AM 17 Q. AND YOU HAD SOME INTERACTIONS WITH HER WHEN YOU WERE
10:07AM 18 JOINING THERANOS IN LATE 2013?

10:07AM 19 A. YEAH.

10:07AM 20 Q. OKAY. AND IF YOU CONTINUE THROUGH THE REST, I'M NOT GOING
10:07AM 21 TO ASK YOU TO LOOK AT EVERY PAGE IN 20478, THERE'S SOME
10:07AM 22 ADDITIONAL COMMUNICATIONS BETWEEN YOURSELF AND MS. RAMAMURTHY.

10:07AM 23 DO YOU SEE THAT?

10:07AM 24 A. YES.

10:07AM 25 Q. AND YOU USED IT TO COMMUNICATE AT THERANOS DURING THE

10:07AM 1 REGULAR COURSE OF -- WHILE AT THERANOS YOU USED EMAILS AS
10:07AM 2 REGULAR COMMUNICATIONS IN YOUR JOB; CORRECT?

10:07AM 3 A. CORRECT.

10:07AM 4 MR. CAZARES: MOVE TO ADMIT 20478, YOUR HONOR.

10:07AM 5 MR. BOSTIC: NO OBJECTION.

10:07AM 6 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:07AM 7 (DEFENDANT'S EXHIBIT 20478 WAS RECEIVED IN EVIDENCE.)

10:07AM 8 BY MR. CAZARES:

10:07AM 9 Q. AND IF WE WANTED TO START MAYBE AT PAGE 3 OF 20478.

10:07AM 10 A. YES.

10:07AM 11 Q. AND AT THE BOTTOM YOU'LL SEE THAT THERE'S A COMMUNICATION
10:07AM 12 FROM MS. RAMAMURTHY TO YOURSELF OCTOBER 18TH --

10:07AM 13 A. UH-HUH.

10:07AM 14 Q. -- SAYING WELCOME TO THERANOS.

10:08AM 15 DO YOU SEE THAT?

10:08AM 16 A. YEAH, I DO.

10:08AM 17 Q. AND THIS IS ABOUT THE TIME THAT YOU WERE OFFERED THE JOB
10:08AM 18 AT THERANOS; CORRECT?

10:08AM 19 A. IT APPEARS SO.

10:08AM 20 Q. AND AGAIN, YOU WERE LOOKING FOR A MANAGEMENT POSITION AT
10:08AM 21 THERANOS; CORRECT?

10:08AM 22 A. MANAGEMENT? I MEAN, I WANTED TO BE APART OF THE
10:08AM 23 DEVELOPMENT OF THIS TECHNOLOGY IN SOME WAY, AND I THOUGHT THAT
10:08AM 24 MY CREDENTIALS PROBABLY WOULD HAVE LED TO SOMETHING LIKE THAT.

10:08AM 25 Q. OKAY.

10:08AM 1 A. IT'S NOT LIKE I WOULD APPLY TO JUST RUN LAB TESTS.

10:08AM 2 Q. UNDERSTOOD. AND IF YOU WANT TO FLIP FORWARD TO PAGE 2 OF

10:08AM 3 THE EXHIBIT.

10:08AM 4 A. YES.

10:08AM 5 Q. ACTUALLY, LET'S GO BACK TO THE FIRST PAGE.

10:08AM 6 A. YOU MEAN PAGE 1?

10:08AM 7 Q. PAGE 1.

10:08AM 8 A. OKAY.

10:08AM 9 Q. AND THE ORIGINAL MESSAGE IN THE MIDDLE OF THE PAGE --

10:08AM 10 A. WE STARTED THERE.

10:08AM 11 Q. -- FROM YOURSELF TO MS. RAMAMURTHY, DO YOU SEE WHERE YOU

10:08AM 12 WROTE, "MONA, MAYBE I CAN ASK YOU MOST OF MY QUESTIONS."

10:09AM 13 DO YOU SEE THAT?

10:09AM 14 A. YES.

10:09AM 15 Q. OKAY. AND ONE OF THE QUESTIONS THAT YOU ASKED

10:09AM 16 MS. RAMAMURTHY IS, YOU KNOW, FIRST YOU DECLARE, "I AM APPROVED

10:09AM 17 BY THE STATE OF CALIFORNIA TO BE A LABORATORY DIRECTOR FOR A

10:09AM 18 PUBLIC HEALTH LABORATORY, AND I MEET ALL OF THE FEDERAL

10:09AM 19 REQUIREMENTS TO BE A CLINICAL LABORATORY DIRECTOR."

10:09AM 20 DO YOU SEE THAT?

10:09AM 21 A. YES.

10:09AM 22 Q. AND THEN YOU WROTE, "THE STATE OF CALIFORNIA, I BELIEVE,

10:09AM 23 REQUIRES THAT I REGISTER AS A CLINICAL LABORATORY DIRECTOR WITH

10:09AM 24 THE STATE DEPARTMENT OF PUBLIC HEALTH."

10:09AM 25 DO YOU SEE THAT?

10:09AM 1
10:09AM 2
10:09AM 3
10:09AM 4
10:09AM 5
10:09AM 6
10:09AM 7
10:09AM 8
10:09AM 9
10:09AM 10
10:09AM 11
10:09AM 12
10:09AM 13
10:09AM 14
10:10AM 15
10:10AM 16
10:10AM 17
10:10AM 18
10:10AM 19
10:10AM 20
10:10AM 21
10:10AM 22
10:10AM 23
10:10AM 24
10:10AM 25

A. YES.

Q. AND BUT THEN YOU WROTE, "THE REGS ARE UNCLEAR, BUT THE STATE OF CALIFORNIA MAY REQUIRE AN EXAMINATION FOR ME TO ACCOMPLISH THAT REGISTRATION."

DO YOU SEE THAT AS WELL?

A. YES.

Q. AND THEN I THINK -- YOU WRITE, "I THINK THAT MY BOARD CERTIFICATION EXAM (WHICH I PASSED OF COURSE) COUNTS AS THAT EXAM, BUT I'M NOT 100 PERCENT."

"IS THERANOS COMFORTABLE WITH THIS STIPULATION?"

"WHAT I MEAN IS AT THE STATE, (WHICH IS UNCLEAR ABOUT THEIR REQUIREMENTS) MIGHT ASK ME TO PASS ANOTHER EXAM TO GET THE REGISTRATION."

"IS THIS OKAY IN THE CONTEXT OF THIS OFFER?"

AND WITH THIS MESSAGE YOU ARE ASKING A QUESTION OF MS. RAMAMURTHY WHETHER IT WAS OKAY WITH THERANOS WHETHER A POSITION THAT YOU'RE GOING TO TAKE MIGHT REQUIRE YOU TO TAKE AND PASS A STATE REQUIRED EXAM?

A. SORT OF. SO BY SEEING THESE EMAILS YOU ARE, AS YOU KNOW, REFRESHING MY MEMORY.

Q. OKAY.

A. SO I CAN EXPLAIN.

Q. GO AHEAD.

A. SO I BELIEVE THAT THE POSITION WAS LABORATORY DIRECTOR.

AND SO LABORATORY DIRECTOR IN MY FIELD IS NOT JUST A JOB

10:10AM 1 TITLE. THAT'S A FORMAL TERMINOLOGY IN THE EYES OF THE FEDERAL
10:10AM 2 GOVERNMENT AND AT THE STATE LEVEL OF GOVERNMENT.

10:10AM 3 SO I SOUGHT HERE NOT TO MISLEAD THERANOS, THAT I MET THE
10:10AM 4 QUALIFICATIONS OF A LAB DIRECTOR AT THE STATE LEVEL.

10:10AM 5 CALIFORNIA -- THERE ARE FEDERAL REGULATIONS FOR WHO CAN BE
10:10AM 6 A LAB DIRECTOR, AND I MEET THOSE.

10:11AM 7 STATES MAY APPLY ADDITIONAL REQUIREMENTS ON TOP OF FEDERAL
10:11AM 8 REQUIREMENTS. CALIFORNIA IS AN EXAMPLE OF ONE OF THOSE STATES,
10:11AM 9 AND BECAUSE I WAS A PUBLIC HEALTH LAB DIRECTOR, THAT DIDN'T
10:11AM 10 NECESSARILY MEAN THAT I QUALIFIED AS A LAB DIRECTOR IN A
10:11AM 11 CLINICAL LABORATORY.

10:11AM 12 SO WHAT I WANTED TO ACHIEVE HERE WAS TO ENSURE THAT
10:11AM 13 THERANOS WAS NOT MISLED BY ME, AND THAT WHILE I QUALIFY AS A
10:11AM 14 PUBLIC HEALTH LAB DIRECTOR, IF THEY'RE HIRING ME AS A LAB
10:11AM 15 DIRECTOR IN THE TERMINOLOGY AS IT'S USED ACCORDING TO CMS, THEN
10:11AM 16 I MAY NOT MEET THOSE REQUIREMENTS, AND IT MAY REQUIRE
10:11AM 17 ADDITIONAL EXAMINATION.

10:11AM 18 Q. THANK YOU FOR THAT EXPLANATION.

10:11AM 19 AND I GUESS IN SHORT, GIVEN YOUR EXPERIENCE, AND NOT
10:11AM 20 WITHSTANDING ALL OF THE EXPERIENCE THAT YOU HAVE, AND I'M NOT
10:11AM 21 CALLING IT INTO QUESTION AT ALL, UNDER THE STATE OF CALIFORNIA
10:11AM 22 RULES AND REGULATIONS TO BE A CLIA LAB DIRECTOR, THERE MIGHT
10:11AM 23 BE, AS YOU SAID, THIS EXTRA REQUIREMENT THAT YOU MIGHT HAVE
10:11AM 24 NEEDED AND YOU WERE JUST ASKING THERANOS IF THERANOS WAS OKAY
10:11AM 25 WITH THAT?

10:11AM 1 A. CORRECT.

10:11AM 2 Q. OKAY. AND DOES THAT INDICATE THAT YOU WERE CONSIDERING

10:12AM 3 AND BEING CONSIDERED FOR THE CLIA LAB DIRECTOR POSITION AT

10:12AM 4 THERANOS IN THIS APPLICATION PROCESS?

10:12AM 5 A. YOU KNOW, I DIDN'T KNOW BECAUSE IT WAS JUST THE TWO WORDS,

10:12AM 6 LAB DIRECTOR, SO I DIDN'T KNOW THAT VERY CLEARLY.

10:12AM 7 Q. BUT NOTWITHSTANDING, YOU FELT COMFORTABLE WITH YOUR

10:12AM 8 EXPERIENCE TO TAKE KIND OF A SENIOR POSITION WITHIN THE CLIA

10:12AM 9 LAB WHETHER OR NOT YOU WERE THE CLIA LAB DIRECTOR OR A SENIOR

10:12AM 10 MANAGER WITHIN THE CLIA LAB; CORRECT?

10:12AM 11 A. WELL, AT THAT MOMENT I JUST WANTED THEM TO UNDERSTAND WHO

10:12AM 12 I WAS. I HAD NOT ACCEPTED ANY JOB AT THAT POINT.

10:12AM 13 Q. OKAY. BUT ULTIMATELY YOU DID ACCEPT THE JOB?

10:12AM 14 A. EVENTUALLY WHEN THEY OFFERED ME THE JOB I ACCEPTED IT,

10:12AM 15 YES.

10:12AM 16 Q. OKAY. AND YOU WERE HAPPY WITH THAT JOB, CORRECT, AT THE

10:12AM 17 TIME?

10:12AM 18 A. EXCUSE ME?

10:12AM 19 Q. YOU WERE HAPPY ACCEPTING THAT POSITION?

10:12AM 20 A. I WAS REALLY EXCITED.

10:12AM 21 Q. OKAY. AND AS PART OF YOUR ACCEPTING THE POSITION, YOU

10:12AM 22 CAME TO HAVE COMMUNICATIONS WITH DR. ROSENDORFF ABOUT KIND OF

10:12AM 23 YOUR ROLE IN THE LAB; IS THAT CORRECT?

10:13AM 24 A. YES.

10:13AM 25 Q. OKAY. AND IN THOSE DISCUSSIONS YOU HAD WITH

10:13AM 1 DR. ROSENDORFF, THE TWO OF YOU DISCUSSED HOW THE TWO OF YOU
10:13AM 2 WOULD OVERSEE THE LAB ONCE YOU STARTED AT THERANOS; CORRECT?

10:13AM 3 A. WE DISCUSSED IT.

10:13AM 4 Q. AND IN THOSE DISCUSSIONS, THOUGH, ONCE YOU ACCEPTED THE
10:13AM 5 POSITION AT THERANOS, YOU UNDERSTOOD THAT IT WAS DR. ROSENDORFF
10:13AM 6 WHO WAS GOING TO BE THE CLIA CERTIFIED LAB DIRECTOR AND THEN
10:13AM 7 YOU WERE GOING TO WORK WITH HIM, THOUGH, IN KIND OF A
10:13AM 8 SIDE-BY-SIDE POSITION?

10:13AM 9 A. THE TENSE YOU USED IS FUTURE.

10:13AM 10 AS I UNDERSTOOD IT, DR. ROSENDORFF ALREADY WAS THE CLIA
10:13AM 11 LABORATORY DIRECTOR.

10:13AM 12 Q. AND WITH THAT UNDERSTANDING, YOU WERE NOT THE CLIA
10:13AM 13 CERTIFIED LAB DIRECTOR DURING THE TIME PERIOD THAT YOU WORKED
10:13AM 14 AT THERANOS?

10:13AM 15 A. THAT'S CLEAR.

10:13AM 16 Q. AND THERE IS A DISTINCTION UNDER THE REGS BETWEEN THE CLIA
10:13AM 17 CERTIFIED LAB DIRECTOR IN A LABORATORY AND OTHER PERSONNEL,
10:13AM 18 INCLUDING SOMEONE WHO MAY HAVE A TITLE OF LAB DIRECTOR;
10:13AM 19 CORRECT?

10:13AM 20 A. THE FEDERAL REGULATIONS AND ALL STATE REGULATIONS ARE
10:13AM 21 UNAMBIGUOUS WITH REGARD TO THE TERM "LABORATORY DIRECTOR," BUT
10:14AM 22 I WOULDN'T SAY THAT THOSE REGULATIONS SPELL OUT THE DIFFERENCES
10:14AM 23 BETWEEN JOB TITLES.

10:14AM 24 Q. FAIR ENOUGH.

10:14AM 25 YOU WOULD AGREE THAT A LAB DIRECTOR IS RESPONSIBLE FOR

10:14AM 1 EVERY ASPECT OF THE LAB'S OPERATION?

10:14AM 2 A. YEAH, ACCORDING TO FEDERAL -- ACCORDING TO REGULATIONS OF

10:14AM 3 A CLIA LABORATORY DIRECTOR.

10:14AM 4 Q. RIGHT. AND THE CLIA LABORATORY DIRECTOR IS ALSO

10:14AM 5 RESPONSIBLE FOR THE SAFETY OF ALL OF THE MEMBERS AND EMPLOYEES

10:14AM 6 WITHIN THE LAB; CORRECT?

10:14AM 7 A. CORRECT.

10:14AM 8 Q. AND THE CLIA LAB DIRECTOR IS ALSO RESPONSIBLE FOR THE

10:14AM 9 QUALITY OF LABORATORY TESTING PERFORMED WITHIN THAT LAB

10:14AM 10 DIRECTOR'S LAB?

10:14AM 11 A. CORRECT.

10:14AM 12 Q. AND THE CLIA LAB DIRECTOR IS ALSO RESPONSIBLE FOR

10:14AM 13 OVERSIGHT OF THE PERSONNEL AND ENSURING THAT THE PROPER

10:14AM 14 TECHNOLOGIES ARE SELECTED AND USED FOR TECHNOLOGIES WITHIN THE

10:14AM 15 LAB?

10:14AM 16 A. YES.

10:14AM 17 Q. OKAY. AND IN ADDITION, THE CLIA LAB DIRECTOR IS

10:14AM 18 RESPONSIBLE TO ENSURE THAT THE MACHINES AND TECHNIQUES ARE

10:14AM 19 OPERATING IN A QUALITY MANNER WITHIN THE LAB; CORRECT?

10:15AM 20 A. YEAH. THOSE ARE MY OWN WORDS ACTUALLY.

10:15AM 21 Q. AND THOSE ARE THE RESPONSIBILITIES OF A LAB DIRECTOR;

10:15AM 22 CORRECT?

10:15AM 23 A. CORRECT.

10:15AM 24 Q. OKAY. THOSE RESPONSIBILITIES INCLUDE LABORATORY DIRECTOR

10:15AM 25 AUTHORIZATION SIGNOFF ON THE USE OF ANY LABORATORY DEVELOPED

10:15AM 1 TESTS WITHIN THE CLINICAL LAB; RIGHT?

10:15AM 2 A. THE CLINICAL LAB DIRECTOR DOES SIGN OFF ON THOSE.

10:15AM 3 Q. OKAY. AND UNTIL THE CLINICAL LABORATORY SIGNS OFF ON THE

10:15AM 4 DEVELOPED TESTS, LIKE THE THERANOS EDISON, THAT TEST CANNOT BE

10:15AM 5 USED IN THE LAB?

10:15AM 6 A. CORRECT.

10:15AM 7 Q. OKAY. AND THE SAME GOES, THE DECISION TO TAKE A TEST OFF

10:15AM 8 LINE WITHIN THE CLINICAL LAB, THAT REQUIRES THE LAB DIRECTOR,

10:15AM 9 THE CLIA LAB DIRECTOR'S AUTHORIZATION; CORRECT?

10:15AM 10 A. YES.

10:15AM 11 Q. NOW, YOU TALKED A LITTLE BIT ABOUT STANDARD OPERATING

10:15AM 12 PROCEDURES, I THINK, A BIT IN YOUR DIRECT EXAM, WHICH ARE A

10:16AM 13 REGULAR PART OF KIND OF THE MANAGEMENT AND OPERATION OF THE

10:16AM 14 CLINICAL LAB; CORRECT?

10:16AM 15 A. I'M NOT SURE I UNDERSTAND YOUR QUESTION.

10:16AM 16 Q. STANDARD OPERATING PROCEDURES ARE THE PROCEDURES UNDER

10:16AM 17 WHICH THE LABORATORY EMPLOYEES AND SCIENTISTS OPERATE AND

10:16AM 18 PERFORM THEIR DUTIES WITHIN THE LAB; IS THAT RIGHT?

10:16AM 19 A. OH, BUT AN SOP WOULD BE ASSIGNED TO SEPARATE KINDS OF

10:16AM 20 OPERATIONS OR TESTS, YEAH.

10:16AM 21 YEAH, IT WOULD BE PLURALIZED, YES.

10:16AM 22 Q. AND ALL OF THOSE SOP'S WITHIN THE LABORATORY REQUIRE THE

10:16AM 23 LABORATORY DIRECTOR TO SIGN OFF; CORRECT?

10:16AM 24 A. WELL, THEY -- IN SOME INSTANCES CLIA DIRECTORS I THINK DO

10:16AM 25 ASSIGN DESIGNEES IF THEY'RE NOT GOING TO BE ON SITE, FOR

10:16AM 1 EXAMPLE. SOME LAB DIRECTORS ARE NOT ON SITE ALL OF THE TIME.

10:16AM 2 Q. BECAUSE THE REGULATIONS PERMIT A LAB DIRECTOR TO OVERSEE

10:16AM 3 MORE THAN ONE LAB AT A TIME; CORRECT?

10:16AM 4 A. CORRECT, FEDERAL REGULATIONS ALLOW A LAB DIRECTOR TO

10:17AM 5 DIRECT UP TO FIVE.

10:17AM 6 Q. AND BECAUSE OF THAT, THE RULE ALLOWS A LAB DIRECTOR TO

10:17AM 7 DESIGNATE, AS YOU SAY, RESPONSIBILITIES OVER SOME OF THE

10:17AM 8 OBLIGATIONS OR RESPONSIBILITIES OF THE LAB DIRECTORS

10:17AM 9 THEMSELVES; RIGHT?

10:17AM 10 A. IN WRITING.

10:17AM 11 Q. BUT THAT IS PERMITTED?

10:17AM 12 A. IT'S MY UNDERSTANDING.

10:17AM 13 Q. AND THE CLINICAL LAB DIRECTOR ALSO HAS OVERSIGHT AND

10:17AM 14 RESPONSIBILITIES FOR OVERSEEING AND APPROVING QUALITY CONTROL

10:17AM 15 ASSURANCE PROGRAMS AND QUALITY CONTROL WITHIN THE LABORATORY;

10:17AM 16 CORRECT?

10:17AM 17 A. YOU SAID CLIA LABORATORY DIRECTORS?

10:17AM 18 Q. YES.

10:17AM 19 A. YEAH.

10:17AM 20 Q. NOW, WITHIN YOUR RELATIONSHIP WITH DR. ROSENDORFF, ONCE

10:17AM 21 YOU ALREADY STARTED WORKING WITHIN THE LAB, I THINK YOU

10:17AM 22 DESCRIBED YOUR ROLE AS KIND OF MORE OPERATIONAL, MAYBE

10:17AM 23 LOGISTICS.

10:17AM 24 IS THAT ACCURATE?

10:17AM 25 A. WELL, WE HAD TO FIGURE OUT SOME WAY TO WORK TOGETHER

10:17AM 1 BECAUSE I DIDN'T HAVE A PIECE OF PAPER SAYING THESE WERE MY JOB
10:17AM 2 DUTIES, SO WE THOUGHT THAT I WOULD FUNCTION ALONG WITH HIM, AND
10:18AM 3 I WAS COMFORTABLE SORT OF FUNCTIONING AS A SUBORDINATE TO HIM
10:18AM 4 THAT WOULD HELP HIM GET LOGISTICS AND OPERATIONS GOING BECAUSE
10:18AM 5 AT LEAST AS A FORMAL LAB DIRECTOR I UNDERSTOOD THOSE THINGS,
10:18AM 6 BUT THAT I COULD CONSULT HIM ON VARIOUS MATTERS ASSOCIATED WITH
10:18AM 7 BEING A CLIA LAB DIRECTOR.

10:18AM 8 Q. AND THAT'S THE ROLE THAT YOU TOOK ON?

10:18AM 9 A. I TOOK THAT ON UPON MYSELF.

10:18AM 10 Q. OKAY. SOON AFTER YOU WERE HIRED, THERE WAS ANOTHER
10:18AM 11 INDIVIDUAL HIRED WITHIN THE LAB NAMED LANGLEY GEE; IS THAT
10:18AM 12 RIGHT?

10:18AM 13 A. YES.

10:18AM 14 Q. OKAY. AND LANGLEY GEE WAS HIRED AS THE QUALITY ASSURANCE
10:18AM 15 AND QUALITY CONTROL MANAGER WITHIN THE LAB; CORRECT?

10:18AM 16 A. THAT'S MY RECOLLECTION, YES.

10:18AM 17 Q. AND LANGLEY GEE HAD EXPERIENCE IN SUCH WORK PRIOR TO
10:18AM 18 JOINING THERANOS; CORRECT?

10:18AM 19 A. YEAH. LANGLEY HAD WORKED IN TOXICOLOGICAL LABORATORIES.

10:18AM 20 Q. AND SO FROM THAT POINT FORWARD IN EARLY 2014 THROUGH THE
10:18AM 21 END OF YOUR TIME PERIOD, LANGLEY GEE WAS THE MANAGER WITHIN THE
10:19AM 22 CLINICAL LAB OVERSEEING THE QUALITY CONTROL PROGRAM; CORRECT?

10:19AM 23 A. HE WAS HIRED WITH THAT JOB TITLE.

10:19AM 24 Q. AND DR. ROSENDORFF WAS PART OF THAT HIRING DECISION;
10:19AM 25 CORRECT?

10:19AM 1 A. I DON'T RECALL.

10:19AM 2 Q. LANGLEY GEE WORKED WITH DR. ROSENDORFF DURING THE TIME

10:19AM 3 PERIOD THAT YOU WERE AT THERANOS; CORRECT?

10:19AM 4 A. CORRECT.

10:19AM 5 Q. NOW, OTHER -- THERE ARE OTHER LAYERS OF MANAGEMENT WITHIN

10:19AM 6 THE CLINICAL LABORATORY AT THERANOS, OTHER THAN THE LAB

10:19AM 7 DIRECTOR AND YOURSELF AND MR. GEE; CORRECT?

10:19AM 8 A. YOU MEAN OTHER LAYERS OF OFFICERSHIP SORT OF LIKE OTHER

10:19AM 9 MANAGERS?

10:19AM 10 Q. LIKE TECHNICAL SCIENTISTS? THERE WAS A TECHNICAL

10:19AM 11 SCIENTIST WITHIN THE CLINICAL LABORATORY; CORRECT?

10:19AM 12 A. THERE MAY HAVE BEEN, ALTHOUGH I DON'T KNOW TO WHOM THAT

10:19AM 13 TITLE WAS ASSIGNED.

10:19AM 14 Q. A TECHNICAL SCIENTIST IS A STATE LICENSED LABORATORY

10:19AM 15 SCIENTIST WITHIN THE CLINICAL LAB; CORRECT?

10:19AM 16 A. THE TERM IS TECHNICAL SUPERVISOR.

10:19AM 17 Q. OKAY. TECHNICAL SUPERVISOR.

10:20AM 18 BUT THAT IS A STATE LICENSED PERSON WITHIN THE CLINICAL

10:20AM 19 LAB; CORRECT?

10:20AM 20 A. IT'S NOT A STATE LICENSURE, NO. THAT'S SOMEBODY WHO MEETS

10:20AM 21 FEDERAL REQUIREMENTS. AND IF THE STATE APPLIES AN ADDITIONAL

10:20AM 22 LAYER OF REQUIREMENTS OVER THE FEDERAL REQUIREMENTS, THEY WOULD

10:20AM 23 HAVE TO MEET ALL OF THOSE REQUIREMENTS. SOMETIMES THAT

10:20AM 24 INVOLVES TAKING A BOARD CERTIFICATION EXAM.

10:20AM 25 Q. AND THERANOS HAD A TECHNICAL SUPERVISOR; CORRECT?

10:20AM 1 A. I DON'T RECALL.

10:20AM 2 Q. DO YOU REMEMBER AN INDIVIDUAL NAMED STEVE MORAN OR MORIN?

10:20AM 3 A. YES.

10:20AM 4 Q. OKAY. AND HE WAS YOUR TECHNICAL SUPERVISOR DURING YOUR

10:20AM 5 TIME PERIOD AT THE LAB; CORRECT?

10:20AM 6 A. I DON'T KNOW.

10:20AM 7 Q. DO YOU REMEMBER A PERSON NAMED HODA ALAMDAR?

10:20AM 8 A. YES.

10:20AM 9 Q. AND HODA ALAMDAR WAS THE GENERAL SUPERVISOR WITHIN THE

10:20AM 10 LAB; CORRECT?

10:20AM 11 A. I DON'T KNOW.

10:20AM 12 Q. YOU DID WORK FOR HER FOR SIX MONTHS WHILE YOU WERE AT THE

10:20AM 13 LAB; RIGHT?

10:20AM 14 A. I REMEMBER HODA.

10:20AM 15 Q. AND SHE WAS AN EXPERIENCED LAB SCIENTIST AS WELL?

10:20AM 16 A. YES.

10:20AM 17 Q. AND YOU WORKED WITH HER?

10:20AM 18 A. WITH HER, YES.

10:20AM 19 Q. NOW, YOU DESCRIBED IN YOUR TESTIMONY YESTERDAY THAT WHEN

10:21AM 20 YOU BEGAN AT THERANOS, IT WASN'T YOUR ORIGINAL INTENTION FOR

10:21AM 21 YOU TO HAVE A ROLE IN PROFICIENCY TESTING; IS THAT RIGHT?

10:21AM 22 A. I DON'T KNOW THAT THAT WAS EXPLICITLY STATED. I THINK

10:21AM 23 WHAT I STATED WAS THAT I WASN'T GIVEN A LIST OF JOB DUTIES.

10:21AM 24 Q. AND AMONG THE JOB DUTIES YOU WEREN'T GIVEN WAS PROFICIENCY

10:21AM 25 TESTING OVERSIGHT?

10:21AM 1 A. NOBODY TOLD ME THAT I WAS TO PROVIDE PT OVERSIGHT.

10:21AM 2 Q. OKAY. BUT THE CLINICAL LAB DIRECTOR OF THE LAB,

10:21AM 3 ADAM ROSENDORFF, DID HAVE RESPONSIBILITIES OF OVERSEEING THE

10:21AM 4 PROFICIENCY TESTING AT THE LAB; RIGHT?

10:21AM 5 A. THAT'S CORRECT.

10:21AM 6 Q. THROUGHOUT THE TIME YOU WERE AT THERANOS, IT WAS

10:21AM 7 ADAM ROSENDORFF'S RESPONSIBILITY AS THE CLIA LAB DIRECTOR TO

10:22AM 8 OVERSEE THE PROFICIENCY TESTING PROGRAM?

10:22AM 9 A. IT IS HIS RESPONSIBILITY.

10:22AM 10 Q. NOW, YOU DESCRIBED YESTERDAY IN YOUR DIRECT EXAMINATION

10:22AM 11 THAT YOU WERE MADE AWARE OF THE FACT THAT PROFICIENCY TESTING

10:22AM 12 WAS RUN ON PREDICATE METHODS USED WITHIN THE LABORATORY BUT NOT

10:22AM 13 ON THE THERANOS LDT METHODS; IS THAT CORRECT?

10:22AM 14 A. CORRECT.

10:22AM 15 Q. INCLUDING THE EDISON?

10:22AM 16 A. EXCUSE ME?

10:22AM 17 Q. INCLUDING THE EDISON -- PROFICIENCY TESTING WAS NOT RUN ON

10:22AM 18 THE EDISON DURING THE TIME PERIOD THAT YOU STARTED AT THERANOS?

10:22AM 19 A. I WAS MADE TO BELIEVE THAT, YES.

10:22AM 20 Q. OKAY. AND BECAUSE OF THAT, YOU REACHED A CONCLUSION THAT

10:22AM 21 YOU WANTED TO RUN PROFICIENCY TESTING SAMPLES ON THE EDISON

10:22AM 22 DEVICES TO TEST THEM OUT I GUESS?

10:22AM 23 A. WELL, THAT'S NOT AN ARBITRARY WHIMSICAL DECISION.

10:23AM 24 THAT WAS MY OPINION BECAUSE THE FEDERAL REGULATIONS

10:23AM 25 REQUIRE THAT WE DO PT ON TESTS THAT ARE USED TO GENERATE

10:23AM 1 PATIENT RESULTS.

10:23AM 2 THE RESULTS OF PROFICIENCY TESTS --

10:23AM 3 MR. CAZARES: YOUR HONOR, MOVE TO STRIKE AS NONE

10:23AM 4 RESPONSIVE.

10:23AM 5 THE COURT: THE PREVIOUS RESPONSE WILL REMAIN. YOU

10:23AM 6 CAN ASK ANOTHER QUESTION.

10:23AM 7 MR. CAZARES: THANK YOU, YOUR HONOR.

10:23AM 8 Q. SO YOU REACHED THIS CONCLUSION THAT YOU WANTED TO RUN

10:23AM 9 PROFICIENCY SAMPLES ON THE EDISON DEVICE; CORRECT?

10:23AM 10 A. CORRECT.

10:23AM 11 Q. AND YOU DISCUSSED THAT WITH ADAM ROSENDORFF?

10:23AM 12 A. YES.

10:23AM 13 Q. BECAUSE HE WAS THE CLIA LABORATORY DIRECTOR?

10:23AM 14 A. CORRECT.

10:23AM 15 Q. AND ADAM ROSENDORFF AGREED?

10:23AM 16 A. YES.

10:23AM 17 Q. NOW, YOU DIDN'T ACTUALLY RUN THESE PROFICIENCY TESTING

10:23AM 18 SAMPLES YOURSELF IN THIS EXPERIMENT, DID YOU?

10:23AM 19 A. NO.

10:23AM 20 Q. OKAY. OTHER LAB, LIKE MAYBE OTHER CLIA LAB ASSISTANTS,

10:23AM 21 RUN THE LAB TESTS?

10:23AM 22 A. CLINICAL LABORATORY SCIENTISTS, YEAH.

10:24AM 23 Q. OKAY. DO YOU KNOW WHO?

10:24AM 24 A. NO.

10:24AM 25 Q. DO YOU KNOW IF IT WAS MORE THAN ONE PERSON?

10:24AM

1

A. NO, I DON'T.

10:24AM

2

Q. DO YOU KNOW WHO PUT TOGETHER THE SPREADSHEETS THAT YOU

10:24AM

3

LOOKED AT YESTERDAY IN YOUR TESTIMONY WITH THE RESULTS OF THAT

10:24AM

4

EXPERIMENT?

10:24AM

5

A. I THOUGHT LANGLY GEE ASSEMBLED THE DATA AND PUT IT INTO

10:24AM

6

SPREADSHEETS WAS MY UNDERSTANDING.

10:24AM

7

Q. BUT LANGLY GEE DIDN'T RUN THE EXPERIMENTS; CORRECT?

10:24AM

8

A. IT WOULDN'T HAVE BEEN IN HIS JOB DESCRIPTION TO DO THAT.

10:24AM

9

Q. AND YOU WANTED TO RUN THIS EXPERIMENT ON THE PROFICIENCY

10:24AM

10

TESTING SAMPLES ON THE EDISON DEVICE BECAUSE YOU WANTED TO SEE

10:24AM

11

HOW THE EDISON COMPARED TO THE FDA APPROVED PREDICATE METHODS?

10:24AM

12

A. NO. I WANTED TO RUN THE PROFICIENCY TESTS ON THE EDISONS

10:24AM

13

BECAUSE THE REGULATIONS IN PATIENT SAFETY REQUIRE IT, AND WE

10:24AM

14

WOULD AT THE SAME TIME LEARN WHETHER THOSE TWO METHODS WERE

10:25AM

15

COMPARABLE.

10:25AM

16

Q. SO COMPARABILITY WAS ONE OF THE REASONS WHY YOU RAN THE

10:25AM

17

TESTS?

10:25AM

18

A. YES. IT'S ANOTHER REASON, BUT IT'S NOT AS IMPORTANT AS

10:25AM

19

THE FIRST REASON.

10:25AM

20

Q. OKAY. AND YOU WANTED TO RUN THIS COMPARISON AS PART OF

10:25AM

21

THE REASON FOR DOING THE EXPERIMENT BECAUSE THE FDA APPROVED

10:25AM

22

DEVICES ARE MORE ESTABLISHED, I THINK, GOLD STANDARD AS YOU

10:25AM

23

STATED YESTERDAY I THINK; CORRECT?

10:25AM

24

A. CORRECT.

10:25AM

25

Q. AND THEY'VE GONE THROUGH THIS RIGOROUS KIND OF TESTING,

10:25AM 1 VOLUMINOUS DOCUMENTATION, AND STUDIES THAT THE FDA REVIEWED AND
10:25AM 2 WOULD HAVE GRANTED APPROVAL BASED ON THE FDA'S OWN KIND OF
10:25AM 3 STANDARDS?

10:25AM 4 A. ALL OF THAT IS CORRECT, AND ON TOP OF THAT THEY WOULD HAVE
10:25AM 5 BEEN IN USE MEDICALLY FOR SOME TIME.

10:25AM 6 Q. GIVING YOU SOME ASSURANCE THAT THEY WERE QUALITY?

10:25AM 7 A. CORRECT.

10:25AM 8 Q. NOW, IN DOING THE EXPERIMENT, SO THE USE OF THE FDA
10:25AM 9 APPROVED MACHINE WAS TO SET A BASELINE TO COMPARE THE EDISON
10:26AM 10 RESULTS; CORRECT?

10:26AM 11 A. THE PT -- YOU'RE TALKING ABOUT RUNNING THE PT'S ON THE
10:26AM 12 PREDICATE METHODS.

10:26AM 13 Q. YEAH, THE INTERNAL.

10:26AM 14 A. RIGHT. YOU WANTED TO SEE HOW WELL THEY WOULD COMPARE IN
10:26AM 15 THAT REGARD.

10:26AM 16 Q. OKAY. AND TO DO THAT YOU WOULD WANT TO ESTABLISH THE
10:26AM 17 BASELINE USING THE FDA APPROVED METHOD; CORRECT?

10:26AM 18 A. I WOULDN'T USE THE WORD BASELINE. YOU WOULD JUST WANT TO
10:26AM 19 SEE WHAT RESULTS YOU GOT.

10:26AM 20 Q. AND THEN RUN THESE SAMPLES ON THE THERANOS METHOD TO AGAIN
10:26AM 21 SEE HOW CLOSE THEY COMPARE?

10:26AM 22 A. YOU WANT TO RUN THESE -- LIKE THE LAW IS UNAMBIGUOUS. THE
10:26AM 23 SPECIMENS HAVE TO BE RUN THE WAY YOU TREAT PATIENT SPECIMENS.

10:26AM 24 Q. AND DO YOU KNOW WHETHER OR NOT THE CLINICAL LAB SCIENTIST,
10:26AM 25 AS YOU SAY WHO DID THE COMPARISON EXPERIMENT, RAN THE PT

10:26AM 1 SAMPLES IN A SIMILAR MANNER THAT THERANOS RUNS ITS PATIENT

10:27AM 2 SAMPLES?

10:27AM 3 A. THEY WERE ASKED TO DO SO.

10:27AM 4 Q. OKAY. BUT YOU DIDN'T ACTUALLY OBSERVE THE EXPERIMENT TAKE

10:27AM 5 PLACE TO ENSURE THAT THE CLINICAL LAB SCIENTIST RAN THE

10:27AM 6 EXPERIMENT IN THE SAME WAY USING THE SAME PROCEDURES THAT THE

10:27AM 7 LAB USES FOR PATIENT SAMPLES; CORRECT?

10:27AM 8 A. CORRECT, CORRECT.

10:27AM 9 Q. NOW, IN YOUR TESTIMONY YESTERDAY YOU TALKED A LITTLE BIT

10:27AM 10 ABOUT, IN RESPONSE TO THE QUESTIONS BY THE GOVERNMENT, ABOUT

10:27AM 11 PROFICIENCY TESTING REQUIREMENTS AS WELL AS AAP, THE

10:27AM 12 ALTERNATIVE ASSESSMENT PROCEDURE I THINK IT IS.

10:27AM 13 IS THAT CORRECT?

10:27AM 14 A. CORRECT.

10:27AM 15 Q. OKAY. AND YOU TESTIFIED THAT YOU DID SOME INVESTIGATION

10:27AM 16 OR STUDY AS A PART OF KIND OF THIS PROCESS RELATING TO THIS

10:27AM 17 INTERNAL EXPERIMENT RUNNING THE PROFICIENCY TESTING SAMPLES ON

10:27AM 18 THE EDISON DEVICE; CORRECT?

10:27AM 19 A. YES. SO YOU SAID AN INVESTIGATION. IT WAS A REVIEW OF

10:28AM 20 THE REGULATIONS.

10:28AM 21 Q. OKAY. AND THE REVIEW OF THE REGULATIONS, THAT'S THE CLIA

10:28AM 22 REGULATIONS; CORRECT?

10:28AM 23 A. WELL, THERE WAS A NUMBER OF THINGS TAKEN INTO ACCOUNT. I

10:28AM 24 BELIEVE I ALSO CONSULTED WHAT WERE CALLED CLSI GUIDELINES.

10:28AM 25 THOSE ARE CLINICAL LABORATORY STANDARDS INSTITUTE, AND THIS IS

10:28AM 1 NOT GOVERNMENT BUT A THIRD PARTY OF PROFESSIONALS WHO SEEK TO
10:28AM 2 MAKE GUIDELINES FOR BEST PRACTICES. THEY'RE NOT GOVERNMENT.
10:28AM 3 Q. AND IN REACHING YOUR OPINIONS REGARDING THE USE OF AAP FOR
10:28AM 4 THE EDISON DEVICES, YOU CONSULTED THE CLSI GUIDELINES?
10:28AM 5 A. I RECALL DOING SO.
10:28AM 6 Q. OKAY. NOW, PRIOR TO YOUR ARRIVAL AT THERANOS, YOU HAD
10:28AM 7 NEVER STUDIED THE CLSI GUIDELINES RELATING TO THE USE AND
10:28AM 8 PROPRIETY OF AAP FOR A LAB DEVELOPED TEST; CORRECT?
10:28AM 9 A. I HAD DISCUSSED THEN WITH PEOPLE WHO HAD BECAUSE THERE
10:29AM 10 WERE SITUATIONS WITH PT THAT -- WHERE WE NEEDED TO FIND CERTAIN
10:29AM 11 SOLUTIONS.
10:29AM 12 Q. SO YOU HAD HAD DISCUSSIONS WITH PERSONS BUT NOT STUDY THE
10:29AM 13 REGS AND THE CLSI GUIDELINES YOURSELF REGARDING THE PROPRIETY
10:29AM 14 AND USE OF AAP FOR A LAB DEVELOPED TEST; CORRECT?
10:29AM 15 A. YEAH, I HAD SOUGHT COUNSEL FROM OTHER LAB DIRECTORS WHO I
10:29AM 16 CONSIDERED MENTORS OF MINE, AND WE DISCUSSED CLSI GUIDELINES AT
10:29AM 17 ONE POINT IN THE CONTEXT OF PROFICIENCY TESTING.
10:29AM 18 Q. AND AGAIN, I APPRECIATE THAT.
10:29AM 19 SO YOU DISCUSSED CLSI GUIDELINES WITH OTHERS, BUT MY
10:29AM 20 QUESTION IS A LITTLE DIFFERENT.
10:29AM 21 A. UH-HUH.
10:29AM 22 Q. DID YOU YOURSELF REVIEW THE CLSI GUIDELINES, PRIOR TO
10:29AM 23 ARRIVING AT THERANOS, RELATING TO THE USE AND PROPRIETY OF AAP
10:29AM 24 FOR LAB DEVELOPED TESTS?
10:29AM 25 A. I DON'T REMEMBER.

10:29AM 1 MR. CAZARES: YOUR HONOR --

10:29AM 2 Q. MR. PANDORI, YOU WERE DEPOSED IN LITIGATION RELATING TO
10:30AM 3 THERANOS ABOUT FIVE YEARS AGO; IS THAT RIGHT?

10:30AM 4 A. I THINK SO. I DON'T REMEMBER EXACTLY HOW LONG AGO.

10:30AM 5 Q. YOU SAT DOWN IN A CONFERENCE ROOM OF SOME SORT, THERE WAS
10:30AM 6 A COURT REPORTER, YOU WERE SWORN, AND YOU --

10:30AM 7 A. YEAH.

10:30AM 8 Q. -- AGREED TO TELL THE TRUTH?

10:30AM 9 AND THERE WERE LAWYERS WHO ASKED QUESTIONS?

10:30AM 10 A. UH-HUH.

10:30AM 11 Q. AND THAT WAS ABOUT MARCH 9TH OF 2017?

10:30AM 12 A. UH-HUH, YES.

10:30AM 13 MR. CAZARES: YOUR HONOR, I HAVE A STATEMENT AT
10:30AM 14 EXHIBIT 2802, 322, LINES 19 TO 323, LINE 22.

10:30AM 15 THE COURT: IS THAT IN ONE OF THESE BINDERS?

10:30AM 16 MR. CAZARES: IT'S IN BINDER 3, YOUR HONOR. I
10:30AM 17 APOLOGIZE.

10:31AM 18 THE COURT: 2802?

10:31AM 19 MR. CAZARES: 2802. IT'S A 3-9-2017 TRANSCRIPT,
10:31AM 20 PAGE 322, LINE 19 TO 323, LINE 22.

10:31AM 21 THE COURT: I DON'T HAVE -- IT'S NOT IN 3.
10:31AM 22 VOLUME 3?

10:31AM 23 MR. CAZARES: YES.

10:31AM 24 THE COURT: 2802.

10:31AM 25 MR. CAZARES: I THINK IT MAY BE TAB 1.

10:31AM 1 THE COURT: IT'S NOT IN THIS.

10:31AM 2 BUT WHILE WE SEARCH FOR THAT, WE'LL NEED TO TAKE OUR

10:32AM 3 BREAK.

10:32AM 4 MR. CAZARES: I APOLOGIZE, YOUR HONOR. YES.

10:32AM 5 THE COURT: SO LET'S DO THAT, LADIES AND GENTLEMEN.

10:32AM 6 WE'LL TAKE OUR BREAK NOW. WE'LL FIND THIS DOCUMENT IN THE

10:32AM 7 INTERIM.

10:32AM 8 PLEASE REMEMBER THIS SHOULD BE ABOUT AN HOUR. I HOPE TO

10:32AM 9 COME BACK AT 11:30. IF IT'S NOT AT THE BOTTOM OF THAT HOUR, IT

10:32AM 10 WILL BE VERY CLOSE TO IT. SO WE'LL TAKE OUR RECESS NOW.

10:32AM 11 THANK YOU, COUNSEL.

10:32AM 12 YOU MAY STAND DOWN, DR. PANDORI. WE'LL COME BACK.

10:32AM 13 IT'S NOT IN THIS.

11:37AM 14 (RECESS TAKEN AT 10:32 A.M. UNTIL 11:39 A.M.)

11:39AM 15 (JURY OUT AT 11:39 A.M.)

11:39AM 16 THE COURT: WE'RE BACK ON THE RECORD NOW OUTSIDE OF

11:39AM 17 THE PRESENCE OF THE JURY.

11:39AM 18 ALL COUNSEL ARE PRESENT. THE JURY IS NOT PRESENT.

11:39AM 19 DR. PANDORI IS PRESENT.

11:39AM 20 DO WE NEED TO DISCUSS SOMETHING?

11:39AM 21 MR. BOSTIC: VERY BRIEFLY, YOUR HONOR.

11:39AM 22 THE COURT: SHOULD THE WITNESS STAY IN THE

11:39AM 23 COURTROOM?

11:39AM 24 MR. BOSTIC: I THINK THE WITNESS COULD BE EXCUSED

11:39AM 25 FOR THIS, YOUR HONOR.

11:40AM 1 THE COURT: OKAY. IF YOU COULD JUST STEP OUTSIDE,
11:40AM 2 SIR. THANK YOU.

11:40AM 3 WE ARE OUTSIDE OF THE PRESENCE OF THE JURY, AND
11:40AM 4 DR. PANDORI HAS LEFT THE COURTROOM.

11:40AM 5 MR. BOSTIC.

11:40AM 6 MR. BOSTIC: THANK YOU, YOUR HONOR.

11:40AM 7 I JUST WANTED TO RAISE ONE ISSUE WITH THE COURT, AND I
11:40AM 8 GAVE MR. CAZARES NOTICE OF THIS A MINUTE AGO. I STILL HAVE IN
11:40AM 9 MIND THE COURT'S COMMENTS EARLIER THIS MORNING ABOUT THE
11:40AM 10 COURT'S CONCERNS ABOUT TESTIMONY RELATING TO OBLIGATIONS UNDER
11:40AM 11 RELEVANT REGULATIONS.

11:40AM 12 AND I NOTE THAT DURING THE CROSS-EXAMINATION SO FAR THERE
11:40AM 13 HAVE BEEN MULTIPLE QUESTIONS RELATING TO THOSE REGULATIONS AND
11:40AM 14 THE OBLIGATIONS THEY IMPOSE AND ON WHOM, AND I NOTE ALSO THAT
11:40AM 15 SIMILAR QUESTIONS WERE PROPOUNDED BY THE DEFENSE DURING THE
11:40AM 16 CROSS-EXAMINATION OF MS. CHEUNG BEFORE DR. PANDORI GAVE
11:41AM 17 TESTIMONY ABOUT HIS VIEW OF THE REGULATIONS IN CONNECTION WITH
11:41AM 18 PROFICIENCY TESTING.

11:41AM 19 I SENSE SOME TENSION BETWEEN THE DEFENSE'S POSITION THAT
11:41AM 20 THAT IS COMPLETELY OUTSIDE THIS CASE, BUT THEN THEIR REPEATED
11:41AM 21 QUESTIONS OF WITNESSES ABOUT WHAT THE REGULATIONS REQUIRE AND
11:41AM 22 WHO THEY REQUIRE IT OF.

11:41AM 23 I'M NOT MOVING TO STRIKE THOSE QUESTIONS AND ANSWERS AT
11:41AM 24 THIS TIME, BUT I WANTED TO RAISE THAT FOR BOTH THE PARTIES TO
11:41AM 25 HAVE IT IN MIND AND FOR THE COURT IN CASE IT'S RELEVANT TO THE

11:41AM 1 DEFENSE'S FUTURE QUESTIONS, OR POSITIONS OR QUESTIONS THAT THE
11:41AM 2 GOVERNMENT TAKES IN CONNECTION WITH THE REDIRECT OF THIS
11:41AM 3 WITNESS.

11:41AM 4 THE COURT: ALL RIGHT. WELL, THANK YOU.

11:41AM 5 WELL, I RAISED THIS MORNING THE COURT'S CONCERN ABOUT THAT
11:41AM 6 TO BOTH OF YOU THAT GUIDES. YOU KNOW, YOU CAN TAKE MY CONCERNS
11:41AM 7 FOR WHATEVER YOU WOULD LIKE. I HAVE THOSE CONCERNS. THOSE
11:41AM 8 CONCERNS WILL CONTINUE.

11:41AM 9 THE EVIDENCE MAY TAKE US SOMEWHERE, THE EVIDENCE PROFFERED
11:42AM 10 BY QUESTIONS ON BOTH SIDES, THAT MAY TAKE US SOMEWHERE THAT
11:42AM 11 CAUSES US TO DISCUSS THE CONCERNS THAT I HAD AND WHETHER OR NOT
11:42AM 12 HAVING EXPRESSED THOSE TO BOTH SIDES THERE HAVE BEEN QUESTIONS
11:42AM 13 THAT HAVE GENERATED TENSION, AS YOU PUT IT, TO THAT POSITION
11:42AM 14 AND WHETHER OR NOT REMEDIES NEED TO BE INVOKED.

11:42AM 15 MR. CAZARES: I UNDERSTAND, YOUR HONOR, AND IT'S A
11:42AM 16 CONCERN I THINK WE ALL SHARE. IT'S A CONCERN THAT THE
11:42AM 17 GOVERNMENT AND THE DEFENSE HAS AND WE'VE RAISED IN THE
11:42AM 18 BEGINNING DURING SOME OF THE GOVERNMENT'S PRESENTATIONS IN
11:42AM 19 DIRECT WITH THE FIRST TWO WITNESSES RELATE TO PROFICIENCY
11:42AM 20 TESTING, QUALITY CONTROL, INSUFFICIENT EXECUTION OF THOSE
11:42AM 21 OBLIGATIONS IN THE LAB, AND THEN DRAWING INFERENCES FROM THAT
11:42AM 22 INSUFFICIENT EXECUTION AS TO THE ACCURACY AND RELIABILITY OF
11:42AM 23 THE TESTS, AND THE OPERATIONS OF THE LAB, AND POTENTIALLY
11:42AM 24 MR. BALWANI'S LIABILITY FOR THOSE ACTIVITIES.

11:43AM 25 TO THE EXTENT THAT THE GOVERNMENT HAS STARTED THE

11:43AM 1 INTRODUCTION OF THOSE ISSUES, WHICH WE THINK HAVE A PLACE, BUT
11:43AM 2 THERE'S A CERTAIN LINE, AND I'M NOT SURE EXACTLY WHERE THAT
11:43AM 3 LINE IS, WHICH IS WHY I THINK THE COURT IS UNDERSTANDABLY
11:43AM 4 CONCERNED.

11:43AM 5 BUT I THINK WE HAVE AN OBLIGATION TO RESPOND TO THAT BY
11:43AM 6 POINTING OUT THOSE REQUIREMENTS, PROFICIENCY TESTING, QUALITY
11:43AM 7 CONTROL, OBLIGATIONS, PERFORMANCE OF THAT, THERE ARE PERSONS
11:43AM 8 WITHIN THE LAB UNDER THOSE SAME REGULATIONS THAT GOVERN THOSE
11:43AM 9 PROCEDURES WHO IS RESPONSIBLE FOR THOSE PROCEDURES AND
11:43AM 10 OVERSEEING THOSE PROCEDURES, AND WE THINK IT IS NOT JUST FAIR
11:43AM 11 BUT NECESSARY TO POINT OUT THE HIERARCHY WITHIN THE LAB AND WHO
11:43AM 12 IT IS THAT HAS RESPONSIBILITY OVER THOSE PROGRAMS.

11:43AM 13 THE COURT: I DON'T THINK MR. BOSTIC -- I HAVEN'T
11:43AM 14 HEARD ON OBJECTION TO THE ORG CHART EXAMINATION OF WHERE THAT
11:43AM 15 IS.

11:43AM 16 IS THAT WHAT YOU'RE CONCERNED ABOUT?

11:43AM 17 MR. BOSTIC: NO, YOUR HONOR.

11:43AM 18 BUT I NOTE THAT COPIES OF THOSE REGULATIONS HAVE BEEN IN
11:44AM 19 THE WITNESS BINDERS CREATED BY THE DEFENSE. I DON'T THINK ANY
11:44AM 20 OF THEM HAVE BEEN INTRODUCED INTO EVIDENCE YET.

11:44AM 21 I AGREE THAT THERE'S A LINE SOMEWHERE THAT WE'RE ALL
11:44AM 22 TRYING TO FIND, AND I JUST WANTED TO FLAG THE ISSUE FOR
11:44AM 23 EVERYONE SO THAT WE'RE DELIBERATE ABOUT KIND OF TOWING THAT
11:44AM 24 LINE OR CROSSING IT.

11:44AM 25 THE COURT: NO, I APPRECIATE THAT, BECAUSE THE COURT

11:44AM 1 OBVIOUSLY IS GOING TO HAVE TO RULE ON OBJECTIONS IF THEY'RE
11:44AM 2 MADE, RULE ON THE ADMISSIBILITY OF EVIDENCE, AS WELL AS MAKE
11:44AM 3 DECISIONS AS TO WHETHER INSTRUCTIONS EITHER DURING OR AT THE
11:44AM 4 END OF THE TRIAL ARE APPROPRIATE.

11:44AM 5 I'M GLAD WE'RE TALKING ABOUT IT. IT'S A SENSITIVE ISSUE.

11:44AM 6 AGAIN, THE CASE INVOLVES SCIENCE, BUT IT DOESN'T MEAN THAT
11:44AM 7 EVERYTHING, AS I SAID THIS MORNING, FALLS UNDER 702. SOME OF
11:44AM 8 IT MAY.

11:44AM 9 IT DOESN'T MEAN THAT, HOWEVER, THAT THERE'S WHOLESALE,
11:44AM 10 BECAUSE IT'S SCIENCE, THE REGULATIONS FROM A GOVERNMENT AGENCY
11:44AM 11 REGARDING LAB OPERATIONS NECESSARILY TRANSFORM INTO AN 18
11:45AM 12 UNITED STATES CODE VIOLATION. WE ALL APPRECIATE THAT.

11:45AM 13 AND THERE'S A FINE LINE HERE. YOU KNOW, THAT'S WHY YOU'RE
11:45AM 14 TERRIFIC LAWYERS. YOU HAVE TO TREAD THAT PATH VERY CAREFULLY
11:45AM 15 FOR BOTH OF YOUR PURPOSES, AND I APPRECIATE THAT YOU'RE DOING
11:45AM 16 THAT NOW.

11:45AM 17 SO THANKS FOR POINTING THAT OUT.

11:45AM 18 MR. BOSTIC: THANK YOU, YOUR HONOR.

11:45AM 19 THE COURT: THANK YOU.

11:45AM 20 DID YOU GET A CORRECT NUMBER FOR THE DOCUMENT?

11:45AM 21 MR. CAZARES: YOUR HONOR --

11:45AM 22 THE COURT: YES.

11:45AM 23 MR. CAZARES: -- I RECONSIDERED AND RETHOUGHT, I
11:45AM 24 ACTUALLY GAVE YOU THE WRONG EXHIBIT NUMBER, AND THAT'S MY
11:45AM 25 FAULT. I APOLOGIZE.

11:45AM 1 BUT AS WE GO BACK ON THE RECORD WITH THE WITNESS, I'M
11:45AM 2 ACTUALLY GOING TO MOVE ON.

11:45AM 3 THE COURT: RIGHT. GOTCHA.

11:45AM 4 SHOULD WE BRING OUR JURY OUT THEN?

11:45AM 5 MR. CAZARES: YES, YOUR HONOR.

11:45AM 6 THE COURT: OKAY. THANK YOU. ALL RIGHT. WE'RE OFF
11:45AM 7 THE RECORD NOW.

11:45AM 8 (JURY IN AT 11:45 A.M.)

11:48AM 9 THE COURT: ALL RIGHT. THANK YOU. PLEASE BE
11:48AM 10 SEATED.

11:48AM 11 WE ARE BACK ON THE RECORD.

11:48AM 12 OUR JURY AND ALTERNATES ARE PRESENT.

11:48AM 13 ALL COUNSEL, MR. BALWANI IS PRESENT.

11:48AM 14 DR. PANDORI IS ON THE STAND.

11:48AM 15 COUNSEL, YOU'D LIKE TO RESUME?

11:48AM 16 MR. CAZARES: THANK YOU, YOUR HONOR.

11:48AM 17 Q. GOOD MORNING AGAIN, DR. PANDORI.

11:48AM 18 A. GOOD MORNING.

11:48AM 19 Q. I WANT TO TURN BACK TO THE TOPIC THAT WE WERE DISCUSSING,
11:49AM 20 WHICH IS THE ISSUE OF THE EXPERIMENT WITHIN THE CLINICAL LAB
11:49AM 21 RELATING TO THESE NEW YORK PROFICIENCY TESTING SAMPLES.

11:49AM 22 DO YOU RECALL THAT?

11:49AM 23 A. YES.

11:49AM 24 Q. AND YOU HAD TESTIFIED THAT YOU WANTED TO PERFORM THE
11:49AM 25 PROFICIENCY TESTING SAMPLES ON THE EDISON DEVICE, AS YOU STATED

11:49AM 1 BEFORE, BECAUSE YOU WERE CONCERNED THAT A REGULATORY
11:49AM 2 REQUIREMENT MAY NOT BE MET WITH RESPECT TO PROFICIENCY TESTING;
11:49AM 3 IS THAT RIGHT?
11:49AM 4 A. CORRECT.
11:49AM 5 Q. OKAY. AND JUST TO GO BACK AND MAKE SURE WE UNDERSTAND
11:49AM 6 YOU. WE TALKED A LITTLE BIT ABOUT THE CLSI GUIDELINES, AND YOU
11:49AM 7 INDICATED THAT YOU HAD HAD DISCUSSIONS WITH OTHER LAB DIRECTORS
11:49AM 8 RELATING TO THE ISSUE OF AAP AND THE PROPRIETY OF AAP FOR LAB
11:49AM 9 DEVELOPED TESTS?
11:49AM 10 A. THOSE CONVERSATIONS THAT I ALLUDED TO WITH OTHER LAB
11:49AM 11 DIRECTORS WERE PRIOR TO.
11:49AM 12 SO I HAD KNOWLEDGE THAT CLSI, CLSI MAY HAVE SOMETHING TO
11:49AM 13 SAY ABOUT PROFICIENCY IN THAT REGARD.
11:50AM 14 Q. OKAY. BUT AGAIN, IT WASN'T SOMETHING THAT YOU SPENT A LOT
11:50AM 15 OF TIME STUDYING THE SPECIFICS OF THE CLSI GUIDELINES REGARDING
11:50AM 16 AAP AS APPLIED TO LAB DEVELOPED TESTS?
11:50AM 17 A. THAT'S CORRECT.
11:50AM 18 Q. OKAY. BUT YOU DO AGREE, DON'T YOU, THAT THERE ARE
11:50AM 19 CIRCUMSTANCES WHEN AN ALTERNATIVE ASSESSMENT PROCEDURE, AN AAP,
11:50AM 20 IS APPROPRIATE FOR SATISFYING PROFICIENCY TESTING REQUIREMENTS
11:50AM 21 ON A LAB DEVELOPED TEST?
11:50AM 22 A. I AGREE.
11:50AM 23 Q. OKAY. AND THERE CAN BE DIFFERENT CIRCUMSTANCES THAT MAY
11:50AM 24 JUSTIFY IT; CORRECT?
11:50AM 25 A. CORRECT.

11:50AM 1 Q. OKAY. ONE OF THOSE MAY BE THE ISSUE OF, I THINK IT'S BEEN
11:50AM 2 MENTIONED IN THE COURTROOM ALREADY, THIS MATRIX EFFECT ISSUE.

11:50AM 3 IS THAT ONE CIRCUMSTANCE?

11:50AM 4 A. THAT'S A POSSIBLE CIRCUMSTANCE.

11:50AM 5 Q. OKAY. ANOTHER POSSIBLE CIRCUMSTANCE WHERE AAP MAY BE
11:50AM 6 APPROPRIATE IS WHERE A COMPANY HAS AN EMERGING OR EMERGENT
11:50AM 7 TECHNOLOGY, SOMETHING DIFFERENT WHERE THERE'S NO PEER AGAINST
11:50AM 8 WHICH TO COMPARE THE PERFORMANCE OF THAT DEVICE AGAINST FOR THE
11:51AM 9 PURPOSES OF PROFICIENCY TESTING; IS THAT RIGHT?

11:51AM 10 A. THAT -- IT COULD BE.

11:51AM 11 Q. OKAY. AND YOU AGREE THAT THERANOS'S EDISON DEVICE USING
11:51AM 12 THE FINGERSTICK TECHNOLOGY WAS A DEVICE THAT HAD NO SPECIFIC
11:51AM 13 PEER, AND BY THAT I MEAN ANOTHER MEDICAL DEVICE TESTING
11:51AM 14 CAPILLARY SAMPLES ON THE IMMUNOASSAYS AGAINST WHICH TO COMPARE
11:51AM 15 FOR THE PURPOSES OF PROFICIENCY TESTING?

11:51AM 16 A. BOTH ARE IMMUNOASSAY, AND THERE ARE OTHER IMMUNOASSAYS
11:51AM 17 THAT ARE INVOLVED FOR WHICH PT, THERE IS GENERATION OF RANGES.

11:51AM 18 SO I WOULD THINK YOU COULD LOOK AT IT A COUPLE OF
11:51AM 19 DIFFERENT WAYS.

11:51AM 20 BUT WITH REGARD TO WHETHER OR NOT THE EDISON HAS A PEER,
11:51AM 21 LIKE ANOTHER PIECE OF EQUIPMENT IN EXISTENCE LIKE THE EDISON AT
11:51AM 22 THAT MOMENT, TO MY KNOWLEDGE, NO. JUST TO MY KNOWLEDGE.
11:51AM 23 THERE'S A LOT OF EQUIPMENT OUT THERE.

11:51AM 24 Q. UNDERSTOOD. THANK YOU.

11:51AM 25 AT THE TIME THIS EXPERIMENT WAS PERFORMED USING THE

11:52AM 1 NEW YORK PT SAMPLES WITHIN THE LAB ON THE EDISON, YOU WERE NOT
11:52AM 2 AWARE OF THE FACT THAT DR. ROSENDORFF HAD ALREADY SIGNED OFF ON
11:52AM 3 AN SOP TO APPLY AAP TO THE EDISON; CORRECT?

11:52AM 4 A. CORRECT.

11:52AM 5 Q. OKAY. AND YOUR LACK OF UNDERSTANDING OR AWARENESS, I'LL
11:52AM 6 CALL IT, OF THE ALREADY EXISTING SOP, THAT WAS PART OF THE
11:52AM 7 REASON WHY YOU WERE CONCERNED ABOUT THE FACT THAT NEW YORK
11:52AM 8 SAMPLES WEREN'T BEING APPLIED TO THE EDISON FOR THE PURPOSE OF
11:52AM 9 SATISFYING PT; IS THAT RIGHT?

11:52AM 10 A. IT SOUNDS CORRECT.

11:52AM 11 I THINK WHAT YOU'RE SAYING IS, IF I COULD ASK BACK TO YOU?

11:52AM 12 Q. NO, NO. IT SOUNDS CORRECT, IS THAT FAIR ENOUGH?

11:52AM 13 A. WOULD YOU RESTATE THE QUESTION.

11:52AM 14 Q. CAN THE REPORTER READ THE TRANSCRIPT?

11:52AM 15 THE COURT: MADAM REPORTER, WOULD YOU PLEASE READ
11:52AM 16 BACK THE LAST QUESTION.

11:52AM 17 MR. CAZARES: I SHOULD HAVE ASKED THAT, YOUR HONOR.
11:52AM 18 I APOLOGIZE.

11:53AM 19 (RECORD READ BY COURT REPORTER.)

11:53AM 20 THE WITNESS: IS IT PART OF MY CONCERN?

11:53AM 21 MY CONCERN AT THAT MOMENT WAS NOT DERIVED FROM A LACK OF
11:53AM 22 KNOWLEDGE OF THAT.

11:53AM 23 IT WAS DERIVED FROM THE FACT THAT THE REGULATIONS REQUIRED
11:53AM 24 SOMETHING THAT I DID NOT SEE BEING PERFORMED.

11:53AM 25 BY MR. CAZARES:

11:53AM 1 Q. OKAY. BUT YOU AGREE WITH ME THAT IF PERFORMED, A PROPERLY
11:53AM 2 PERFORMED AAP PROCEDURE COULD SATISFY THAT SAME PROFICIENCY
11:53AM 3 TESTING REQUIREMENT WITH RESPECT TO THE EDISON?

11:53AM 4 A. UPON AUDIT BY CLIA, THE CLIA AUDITOR WOULD HAVE TO MAKE
11:53AM 5 THAT ASSESSMENT.

11:53AM 6 Q. BUT YOU AGREE WITH ME THAT A PROPERLY APPLIED AAP
11:53AM 7 PROCEDURE TO A LAB DEVELOPED TEST LIKE THE EDISON CAN SATISFY
11:54AM 8 THE PT REQUIREMENTS?

11:54AM 9 A. YES, THAT'S MY UNDERSTANDING.

11:54AM 10 Q. OKAY. IN YOUR BINDER THAT YOU HAVE THERE, AND I'LL TRY TO
11:54AM 11 GET THE CITE CORRECTLY THIS TIME. WE'RE LOOKING AT VOLUME 2.
11:54AM 12 IF YOU WANT TO TAKE OUT EXHIBIT 9939.

11:54AM 13 YOUR HONOR, I BELIEVE IT HAS ALREADY BEEN CONDITIONALLY
11:54AM 14 ADMITTED, SO I'D LIKE TO PUBLISH IT WITH YOUR PERMISSION?

11:54AM 15 THE WITNESS: 9939?

11:54AM 16 MR. CAZARES: 9939.

11:54AM 17 THE COURT: IN VOLUME?

11:54AM 18 MR. CAZARES: THAT IS IN VOLUME 2, YOUR HONOR.

11:54AM 19 THE WITNESS: CAN YOU GIVE ME A ROUGH IDEA WHERE IN
11:54AM 20 VOLUME 2?

11:54AM 21 MR. CAZARES: ABOUT MIDPOINT. IN THE 9000'S.

11:55AM 22 THE WITNESS: 9973.

11:55AM 23 THE COURT: IT'S IN VOLUME 1. IT'S IN VOLUME 1 OF
11:55AM 24 MY BINDER.

11:55AM 25 MR. CAZARES: OKAY. VOLUME 1. I APOLOGIZE.

11:55AM 1 YOUR HONOR, I DO BELIEVE IT HAS BEEN CONDITIONALLY
11:55AM 2 ADMITTED.
11:55AM 3 MAY I PUBLISH?
11:55AM 4 THE COURT: I THINK THIS WAS SUBJECT TO --
11:55AM 5 THE WITNESS: OKAY. 9939, YES.
11:55AM 6 THE COURT: -- SUBJECT TO AUTHENTICATION. SO I WILL
11:55AM 7 ALLOW THIS TO BE PUBLISHED.
11:55AM 8 LADIES AND GENTLEMEN, YOU RECALL THAT I TALKED ABOUT THIS
11:56AM 9 THE OTHER DAY. THIS IS BEING PUBLISHED NOW SUBJECT TO
11:56AM 10 AUTHENTICATION THAT WILL HAPPEN, I'M TOLD, SOME TIME LATER IN
11:56AM 11 THE TRIAL.
11:56AM 12 SHOULD THAT NOT HAPPEN, THEN I'LL STRIKE THIS AND ANY
11:56AM 13 TESTIMONY RELATED TO IT.
11:56AM 14 BUT IT IS CONDITIONALLY ADMITTED AT THIS POINT, AND IT MAY
11:56AM 15 BE PUBLISHED.
11:56AM 16 (DEFENDANT'S EXHIBIT 9939 WAS CONDITIONALLY RECEIVED IN
11:56AM 17 EVIDENCE.)
11:56AM 18 BY MR. CAZARES:
11:56AM 19 Q. IF WE CAN FOCUS ON THE TOP OF THE FIRST PAGE AND DRAWING
11:56AM 20 YOUR ATTENTION, DR. PANDORI, THE DATE APPEARS TO BE
11:56AM 21 NOVEMBER 26TH, 2013.
11:56AM 22 DO YOU SEE THAT?
11:56AM 23 A. I SEE THAT.
11:56AM 24 Q. OKAY. AND THE DOCUMENT IS TITLED STANDARD OPERATING
11:56AM 25 PROCEDURE.

11:56AM 1 DO YOU SEE THAT?

11:56AM 2 A. YES.

11:56AM 3 Q. AND PROFICIENCY TESTING FOR THERANOS LAB DEVELOPED TESTS:
11:56AM 4 EDISON 3.5?

11:56AM 5 A. YES.

11:56AM 6 Q. AND THE SIGNATURES APPEAR TO BE LI DING-CHIANG, LABORATORY
11:56AM 7 GENERAL SUPERVISOR.

11:56AM 8 DO YOU SEE THAT?

11:56AM 9 A. YES.

11:56AM 10 Q. AND DID YOU WORK WITH LI DING-CHIANG DURING THE TIME YOU
11:56AM 11 WERE AT THERANOS?

11:56AM 12 A. I THINK SO. THE NAME -- YEAH, I BELIEVE, YES.

11:56AM 13 Q. AND LABORATORY GENERAL SUPERVISOR, THAT'S A POSITION
11:57AM 14 WITHIN THE CLINICAL LAB?

11:57AM 15 A. I'M SORRY, LI DING, I REMEMBER HER WELL.

11:57AM 16 WHAT IS THE QUESTION?

11:57AM 17 Q. THAT'S ALL, JUST WHETHER YOU REMEMBER HER.

11:57AM 18 A. OH.

11:57AM 19 Q. DANIEL YOUNG. YOU KNOW WHO DR. YOUNG IS?

11:57AM 20 A. YES.

11:57AM 21 Q. AND THEN DR. ROSENDORFF AT THE BOTTOM APPEARS TO BE THE
11:57AM 22 THIRD SIGNATORY.

11:57AM 23 DO YOU SEE THAT?

11:57AM 24 A. YES.

11:57AM 25 Q. AND IT APPEARS TO BE DECEMBER 2ND, 2013?

11:57AM 1 A. IT DOES.

11:57AM 2 Q. SO AROUND THE TIME, MAYBE A LITTLE BIT BEFORE YOU STARTED

11:57AM 3 WORKING AT THERANOS?

11:57AM 4 A. NOTABLY BEFORE, YEAH.

11:57AM 5 Q. AND DURING THE TIME PERIOD, OR AT THE TIME I'LL SAY IT,

11:57AM 6 THAT YOU WERE INVOLVED IN THE DISCUSSIONS TO CONDUCT THIS

11:57AM 7 EXPERIMENT USING THE NEW YORK PROFICIENCY TESTING SAMPLES, YOU

11:57AM 8 HAD NOT SEEN OR REVIEWED THIS SOP REFLECTED AT EXHIBIT 9939;

11:57AM 9 CORRECT?

11:57AM 10 A. CORRECT.

11:57AM 11 Q. AND DR. ROSENDORFF HADN'T MENTIONED IT TO YOU UP TO THAT

11:57AM 12 POINT?

11:57AM 13 A. CORRECT.

11:57AM 14 Q. OKAY. BUT YOU AGREE THAT DR. ROSENDORFF WAS AUTHORIZED TO

11:57AM 15 APPROVE THIS PROCEDURE FOR SATISFYING PT REQUIREMENTS ON THE

11:58AM 16 EDISON?

11:58AM 17 A. YES.

11:58AM 18 Q. OKAY. AND IF YOU LOOK AT THE THIRD PAGE OF THE EXHIBIT,

11:58AM 19 THE SOP FOR PROFICIENCY TESTING ON THE EDISON, UNDER 2.1.

11:58AM 20 DO YOU SEE THAT?

11:58AM 21 A. I SEE 2.1.

11:58AM 22 Q. UNDER SCOPE THE SOP READS, "THE ALTERNATIVE ASSESSMENT

11:58AM 23 PROTOCOL APPLIES TO ALL LABORATORY DEVELOPED TESTS ON THE

11:58AM 24 EDISON 3.5 INSTRUMENT, AND WILL BE CONDUCTED IMMEDIATELY

11:58AM 25 FOLLOWING THE RECEIPT OF PROFICIENCY TESTING RESULTS FROM THE

11:58AM 1 AMERICAN PROFICIENCY INSTITUTE, (API) ."

11:58AM 2 DO YOU SEE THAT?

11:58AM 3 A. YES.

11:58AM 4 Q. AND "THE API CONDUCTS PROFICIENCY TESTING OF ALL 4

11:58AM 5 IMMUNOASSAYS OFFERED AT TIME OF SOP DRAFTING," AND THEN THERE'S

11:58AM 6 A REFERENCE TO FOUR ASSAYS.

11:58AM 7 DO YOU SEE THAT?

11:59AM 8 A. YES.

11:59AM 9 Q. AND SO PER THE SOP, THIS PROCEDURE FOR SATISFYING

11:59AM 10 PROFICIENCY TESTING WAS SUPPOSED TO BE CONDUCTED CONCURRENT

11:59AM 11 WITH THE RECEIPT OF PROFICIENCY TESTING SAMPLES FROM API; IS

11:59AM 12 THAT RIGHT?

11:59AM 13 A. THIS WAS THE SOP, YES.

11:59AM 14 Q. OKAY. BUT THAT WASN'T DONE AS PART OF YOUR EXPERIMENT

11:59AM 15 RUNNING THE NEW YORK SAMPLES ON THE EDISON; CORRECT?

11:59AM 16 A. I DON'T UNDERSTAND THE QUESTION. COULD YOU REPHRASE IT.

11:59AM 17 Q. YOUR EXPERIMENT USING THE NEW YORK SAMPLES FOR THE EDISON,

11:59AM 18 JUST FOR THIS PT ISSUE, WAS NOT CONDUCTED UPON RECEIPT OF THE

11:59AM 19 NEW YORK SAMPLES; CORRECT?

11:59AM 20 A. THAT WAS MY OBSERVATION -- THAT IS WHAT I WAS LED TO

11:59AM 21 BELIEVE.

11:59AM 22 Q. BUT YOU DON'T KNOW THAT?

11:59AM 23 A. WELL, LONGLY GEE, I BELIEVE, OR ADAM, AND/OR BOTH TOLD

11:59AM 24 ME --

11:59AM 25 Q. THAT'S OKAY.

11:59AM 1 MOVE TO STRIKE, YOUR HONOR. THAT'S A YES OR NO ANSWER.

11:59AM 2 THE COURT: YOU WANTED A YES OR NO?

11:59AM 3 MR. CAZARES: I WANTED A YES OR NO.

12:00PM 4 THE COURT: WHY DON'T YOU RE-ASK YOUR QUESTION.

12:00PM 5 BY MR. CAZARES:

12:00PM 6 Q. THE QUESTION WAS AT THE TIME THAT YOU CONDUCTED THE

12:00PM 7 NEW YORK EXPERIMENT, DID YOU CONDUCT THE EXPERIMENT CONCURRENT

12:00PM 8 WITH THE LAB'S RECEIPT OF THE SAMPLES FROM NEW YORK?

12:00PM 9 A. OH, NO.

12:00PM 10 Q. OKAY. SO THE SAMPLES HAD ALREADY BEEN RECEIVED; CORRECT?

12:00PM 11 A. THAT IS MY UNDERSTANDING.

12:00PM 12 Q. AND THE SAMPLES HAD ALREADY BEEN USED TO RUN PT ON

12:00PM 13 PREDICATE DEVICES; CORRECT?

12:00PM 14 A. YES.

12:00PM 15 Q. AND SO WHAT YOU WERE USING FOR THE EXPERIMENT WAS THE

12:00PM 16 LEFTOVER; CORRECT?

12:00PM 17 A. CORRECT.

12:00PM 18 Q. OKAY. AND THAT WASN'T A PROCEDURE SET FORTH IN THE SOP

12:00PM 19 REFLECTED IN EXHIBIT 9939; CORRECT?

12:00PM 20 A. I'D HAVE TO READ THE WHOLE PROCEDURE.

12:00PM 21 Q. AND YOU HADN'T DONE THAT AT THE TIME; CORRECT?

12:00PM 22 A. ME? NO.

12:00PM 23 THE COURT: DO YOU WANT HIM TO READ THIS TO ANSWER

12:00PM 24 YOUR LAST QUESTION?

12:00PM 25 MR. CAZARES: NO, YOUR HONOR.

12:00PM 1 THE COURT: OKAY.

12:01PM 2 BY MR. CAZARES:

12:01PM 3 Q. UNDER 3.1 ON THIS THIRD PAGE OF THE EXHIBIT UNDER

12:01PM 4 RESPONSIBILITIES, DO YOU SEE THAT?

12:01PM 5 A. I SEE IT.

12:01PM 6 Q. AND THE SOP READS, "IT IS THE RESPONSIBILITY OF THE

12:01PM 7 TECHNICAL SUPERVISOR TO ENSURE THAT THE ALTERNATIVE ASSESSMENT

12:01PM 8 PROCEDURE IS CONDUCTED AT LEAST TWICE TIMES A YEAR FOR ALL 4

12:01PM 9 ANALYTES."

12:01PM 10 A. I SEE IT.

12:01PM 11 Q. OKAY. AND YOU REFERENCED BEFORE THAT THE CLINICAL LAB

12:01PM 12 DIRECTOR HAS THE AUTHORITY TO DELEGATE RESPONSIBILITIES; RIGHT?

12:01PM 13 A. YES.

12:01PM 14 Q. AND IS THIS ONE OF THE EXAMPLES WHERE ADAM ROSENDORFF, THE

12:01PM 15 CLINICAL LAB DIRECTOR, DELEGATED RESPONSIBILITIES FOR THE

12:01PM 16 TESTING TO THE TECHNICAL SUPERVISOR?

12:01PM 17 MR. BOSTIC: FOUNDATION. CALLS FOR SPECULATION.

12:01PM 18 THE COURT: CAN YOU LAY A FOUNDATION FOR THAT,

12:01PM 19 COUNSEL?

12:01PM 20 BY MR. CAZARES:

12:01PM 21 Q. THE DOCUMENT REFERENCED IN THE EXHIBIT REFERENCED 9939

12:01PM 22 APPEARS TO BE THE STANDARD OPERATING PROCEDURE FOR AAP

12:02PM 23 REGARDING THE EDISON DURING THE TIME THAT YOU WORKED AT

12:02PM 24 THERANOS; CORRECT?

12:02PM 25 A. IT APPEARS TO BE.

12:02PM 1 Q. OKAY. AND IT LOOKS LIKE ADAM ROSENDORFF, THE LAB
12:02PM 2 DIRECTOR, AUTHORIZED IT; CORRECT?
12:02PM 3 A. YES.
12:02PM 4 Q. AND HE WAS AUTHORIZED TO IMPLEMENT THE SOP REFLECTED IN
12:02PM 5 9939; CORRECT?
12:02PM 6 A. HE AUTHORIZED? YES.
12:02PM 7 Q. AND AS THE LAB DIRECTOR AT THE TIME UNDER CLIA,
12:02PM 8 ADAM ROSENDORFF HAD THE AUTHORITY TO DELEGATE THE
12:02PM 9 RESPONSIBILITY TO ENSURE THAT THE AAP PROCEDURE WAS EXECUTED AS
12:02PM 10 REFLECTED IN EXHIBIT 9939?
12:02PM 11 A. IT'S MY UNDERSTANDING --
12:02PM 12 MR. BOSTIC: OBJECTION. CALLS FOR A LEGAL
12:02PM 13 CONCLUSION.
12:02PM 14 THE COURT: YOU'RE ASKING WHETHER HIS JOB, THE
12:02PM 15 DOCTOR, ROSENDORFF'S JOB ALLOWED HIM TO DO THAT?
12:02PM 16 MR. CAZARES: EXACTLY, YOUR HONOR.
12:02PM 17 THE COURT: DID YOU UNDERSTAND THAT?
12:02PM 18 THE WITNESS: I UNDERSTAND.
12:02PM 19 THE COURT: OKAY. YOU CAN ANSWER THE QUESTION.
12:02PM 20 THE WITNESS: SO THIS IS A MORE COMPLEX ANSWER THAN
12:02PM 21 YOU'RE LOOKING FOR.
12:02PM 22 BY MR. CAZARES:
12:02PM 23 Q. IT'S ACTUALLY JUST A YES OR NO.
12:02PM 24 A. I DON'T KNOW.
12:02PM 25 Q. YOU DON'T KNOW WHETHER THE LAB --

12:03PM 1 THE QUESTION IS, SO YOU'RE TELLING THE COURT NOW THAT YOU
12:03PM 2 DON'T KNOW WHETHER THE CLINICAL LAB DIRECTOR, ADAM ROSENDORFF,
12:03PM 3 UNDER CLIA HAD THE AUTHORITY TO DELEGATE RESPONSIBILITIES?

12:03PM 4 IS THAT WHAT YOU'RE SAYING?

12:03PM 5 A. YES, HE HAS THE AUTHORITY TO DELEGATE RESPONSIBILITIES.

12:03PM 6 Q. AND DOES THAT INCLUDE THE AUTHORITY TO DELEGATE
12:03PM 7 RESPONSIBILITY TO HIS TECHNICAL SUPERVISOR TO ENSURE THAT THE
12:03PM 8 AAP PROGRAM FOR THE EDISON WAS EXECUTED?

12:03PM 9 A. IN CIRCUMSTANCES -- IN DIAGNOSTIC LABORATORIES, LABORATORY
12:03PM 10 DIRECTORS HAVE THAT AUTHORITY.

12:03PM 11 Q. THANK YOU. MOVING ON TO PAGE 5 OF THE PROCEDURE, UNDER 4
12:03PM 12 PROCEDURE?

12:03PM 13 A. YES.

12:03PM 14 Q. AND DO YOU SEE THE SOP IMPLEMENTED BY DR. ROSENDORFF
12:04PM 15 INCLUDES OBTAINING FIVE VENOUS CLINICAL SAMPLES FROM AN
12:04PM 16 IN-HOUSE COLLECTION.

12:04PM 17 DO YOU SEE THAT?

12:04PM 18 A. YES.

12:04PM 19 Q. OKAY. AND VENOUS SAMPLES MEANING KIND OF REAL BLOOD FROM
12:04PM 20 A PERSON'S ARM THEORETICALLY?

12:04PM 21 A. VENOUS BLOOD.

12:04PM 22 Q. OKAY. AND THAT'S DIFFERENT THAN MOST PT PROGRAMS;
12:04PM 23 CORRECT?

12:04PM 24 A. TO HAVE TO DRAW BLOOD FROM AN INDIVIDUAL TO PERFORM PT'S
12:04PM 25 IS HIGHLY UNUSUAL.

12:04PM 1 Q. AND UNDER 4.4 THE AAP SOP AT EXHIBIT 9939 REFERENCES
12:04PM 2 RUNNING THE PREDICATE SIEMENS IMMULITE AND THE THERANOS LDT
12:04PM 3 METHODS IN PARALLEL USING FIVE SAMPLES FOR EACH ASSAY FOR EACH
12:04PM 4 PATIENT.
12:04PM 5 DO YOU SEE THAT?
12:04PM 6 A. YES.
12:04PM 7 Q. OKAY. AND IS THERE ANYTHING WRONG WITH THAT PROCEDURE?
12:04PM 8 A. YES.
12:04PM 9 Q. AND WHAT IS WRONG WITH IT?
12:04PM 10 A. THE VENOUS SAMPLES ARE BEING RUN ON THE THERANOS LDT
12:05PM 11 METHOD AND THE IMMULITE, BUT THE SPECIMENS ARE NOT DRAWN IN THE
12:05PM 12 SAME MANNER AND PLACED IN THE SAME TUBE PRIOR TO TESTING.
12:05PM 13 Q. AND DID YOU MAKE THAT KNOWN TO DR. ROSENDORFF WHEN YOU
12:05PM 14 WERE AT THERANOS?
12:05PM 15 A. I DIDN'T. AS YOU ASKED EARLIER, I WASN'T AWARE OF THIS
12:05PM 16 SOP.
12:05PM 17 Q. UNDER ACCEPTANCE CRITERIA FURTHER DOWN ON THAT SAME
12:05PM 18 PAGE 5 UNDER 5.4 THE SOP READS, "IF AN ANALYTE FAILS TWO
12:05PM 19 CONSECUTIVE PROFICIENCY EVENTS, TESTING WILL BE DISCONTINUED
12:05PM 20 FOR THAT ANALYTE, UNTIL SUCH TIME AS THE ASSAY IS CORRECTED AND
12:05PM 21 PASSES AAP PT RETESTING."
12:05PM 22 DO YOU SEE THAT?
12:05PM 23 A. YES.
12:05PM 24 Q. IS THAT AN APPROPRIATE PROCEDURE?
12:05PM 25 A. CLIA MAY OR MAY NOT, I THINK, AGREE WITH THAT.

12:06PM 1 SO I'M NOT SURE WHETHER OR NOT -- I'D HAVE TO REVIEW THE
12:06PM 2 REGULATIONS.

12:06PM 3 Q. OKAY. NOW, LET'S GO ABOVE THAT ONE AT 5.3 IN THE SAME
12:06PM 4 SOP.

12:06PM 5 "IF AN ANALYTE FAILS A PROFICIENCY EVENT, CORRECTIVE
12:06PM 6 ACTIONS WILL BE IMPLEMENTED ACCORDING TO QOP-00006."

12:06PM 7 DO YOU SEE THAT?

12:06PM 8 A. I SEE THAT.

12:06PM 9 Q. AND IS IT TYPICAL UNDER PROFICIENCY TESTING PROGRAMS THAT
12:06PM 10 THE FAILURE OF ONE PROFICIENCY TESTING EVENT DOESN'T REQUIRE
12:06PM 11 THE LAB TO STOP ALL TESTING USING THAT METHOD?

12:06PM 12 A. THE FAILURE OF ONE OF THEM DOES NOT REQUIRE HALTING
12:06PM 13 TESTING ON THAT TEST, BUT IT DOES INVOKE AND REQUIRE
12:06PM 14 INVESTIGATION.

12:06PM 15 Q. SO YOU HAVE TO INVESTIGATE WHY THE FAILURE MAY HAVE
12:06PM 16 HAPPENED?

12:06PM 17 A. CORRECT.

12:06PM 18 Q. OKAY. BUT YOU COULD CONTINUE TESTING PATIENT SAMPLES
12:06PM 19 WHILE THAT IS GOING ON?

12:06PM 20 A. I BELIEVE YOU HAVE TO FAIL TWO OF THREE EVENTS ACCORDING
12:06PM 21 TO THE FEDERAL GOVERNMENT.

12:06PM 22 Q. WHICH CAN SPAN A PERIOD OF MONTHS; CORRECT?

12:07PM 23 A. CORRECT.

12:07PM 24 Q. MAYBE EVEN A YEAR; CORRECT?

12:07PM 25 A. OH, I DON'T KNOW ABOUT A YEAR.

12:07PM

1

Q. IT SAYS THREE TIMES A YEAR OR EVERY SIX MONTHS?

12:07PM

2

A. WELL, GENERALLY MY UNDERSTANDING IS THAT THESE -- PT HAD

12:07PM

3

TO HAVE BEEN DONE THREE TIMES A YEAR WITH A MINIMUM OF FIVE

12:07PM

4

CHALLENGES PER EVENT.

12:07PM

5

Q. AND IF YOU TURN TO THE NEXT PAGE, IF WE CAN FOCUS ON

12:07PM

6

THE -- UNDER REFERENCES, 7.5.

12:07PM

7

A. YES.

12:07PM

8

Q. ONE OF THE REFERENCES IN DR. ROSENDORFF'S SOP IS CLSI

12:07PM

9

GUIDELINE GP 29.

12:07PM

10

DO YOU SEE THAT?

12:07PM

11

A. I SEE IT.

12:07PM

12

Q. AND IS THAT SOMETHING THAT YOU YOURSELF REVIEWED IN THE

12:07PM

13

PROCESS OF LEARNING ABOUT THE AAP PROGRAM AT THERANOS?

12:07PM

14

A. I DON'T REMEMBER THE CODE NUMBERS.

12:07PM

15

Q. BUT A CLSI GUIDELINE NONETHELESS IS SOMETHING THAT YOU

12:07PM

16

CONSULTED?

12:07PM

17

A. I RECALLED CONSULTING CLSI GUIDELINES, BUT I CAN'T SPEAK

12:08PM

18

TO WHETHER IT WAS GP 29.

12:08PM

19

Q. UNDERSTOOD.

12:08PM

20

OKAY. I'M TRYING TO GET THE VOLUME CORRECT THIS TIME. SO

12:08PM

21

I'D LIKE YOU TO TAKE A LOOK AT EXHIBIT 20418. 20418. THAT'S

12:09PM

22

IN VOLUME 2.

12:09PM

23

A. I'M THERE.

12:09PM

24

Q. AND CAN YOU TAKE A LOOK AT THE FIRST PAGE AND JUST

12:09PM

25

FAMILIARIZE YOURSELF WITH THE DOCUMENT. LET ME KNOW WHEN

12:09PM 1 YOU'RE SATISFIED THAT YOU'RE FAMILIAR WITH IT?

12:09PM 2 A. I RECOGNIZE THIS.

12:09PM 3 Q. OKAY. AND THIS IS THE CLSI GUIDELINE THAT RELATES TO AAP

12:09PM 4 TESTING AND PROCEDURES; CORRECT?

12:09PM 5 A. TO A DEGREE. THIS SAYS SPECIFICALLY WHEN PROFICIENCY

12:09PM 6 TESTING IS NOT AVAILABLE, WHICH IS A SITUATION THAT WOULD

12:09PM 7 INVOKE AN AAP, BUT IT'S NOT BROAD ENOUGH TO EXPLAIN EVERY

12:09PM 8 INSTANCE WHERE AN AAP WOULD BE NECESSARY.

12:09PM 9 Q. BUT THIS IS A GUIDELINE THAT YOU RECOGNIZE?

12:09PM 10 A. IT'S HARD TO REMEMBER DOCUMENTS LIKE THIS, BUT I BELIEVE

12:09PM 11 I'VE SEEN SOMETHING LIKE THIS BEFORE.

12:09PM 12 Q. OKAY. AND YOU'VE REVIEWED THE CLSI GUIDELINES AS THEY

12:10PM 13 RELATE TO AAP TESTING IN THE PAST; CORRECT?

12:10PM 14 A. IN THE PAST.

12:10PM 15 Q. AND IN PARTICULAR DURING YOUR TIME PERIOD AT THERANOS, YOU

12:10PM 16 REVIEWED CLSI GUIDELINES WHEN THIS ISSUE OF THE AAP TESTING IN

12:10PM 17 RELATION TO THE PT PROGRAM CAME UP IN EARLY 2014?

12:10PM 18 A. I RECALL -- I'M SORRY, I RECALL.

12:10PM 19 Q. OKAY.

12:10PM 20 YOUR HONOR, MOVE TO ADMIT?

12:10PM 21 MR. BOSTIC: AUTHENTICATION AND 401.

12:10PM 22 THE COURT: COUNSEL, ANYTHING YOU WANT TO ADD? YOU

12:10PM 23 HEARD THE OBJECTION.

12:10PM 24 MR. CAZARES: THE WITNESS HAS REFERENCED THAT HE

12:10PM 25 REVIEWED THESE, HE RECALLS IT, THEY'RE REFERENCED IN THE LAB'S

12:10PM 1 SOP THAT IS AT ISSUE RELATING TO AAP AND PROFICIENCY TESTING.

12:10PM 2 THE RELEVANCE IS CLEAR MID LANE.

12:10PM 3 THE COURT: WELL, I'M NOT CERTAIN THAT THIS DOCUMENT

12:10PM 4 IN TOTO NEEDS TO BE INTRODUCED. I'M NOT CERTAIN WHAT THE

12:10PM 5 RELEVANCE OF IT IS.

12:10PM 6 CAN YOU EXAMINE ON ANOTHER TOPIC, AND WE CAN TALK ABOUT

12:11PM 7 THIS OUTSIDE OF THE PRESENCE OF THE JURY? OR DO WE NEED TO DO

12:11PM 8 THAT NOW?

12:11PM 9 MR. CAZARES: WE CAN SET THAT ASIDE, AND I CAN MOVE

12:11PM 10 ON TO SOMETHING ELSE.

12:11PM 11 THE WITNESS: DO YOU WANT ME TO SET IT ASIDE?

12:11PM 12 BY MR. CAZARES:

12:11PM 13 Q. YOU CAN SET IT ASIDE. WE WILL ADDRESS IT LATER.

12:11PM 14 IF YOU CAN NOW TAKE A LOOK AT -- SO THIS IS IN THE

12:11PM 15 GOVERNMENT'S BINDER, SO THE SMALLER BINDER, EXHIBIT 1548.

12:11PM 16 1548.

12:12PM 17 A. IT'S NOT PRESENT IN THE BINDER.

12:12PM 18 MR. CAZARES: YOUR HONOR, I BELIEVE 1548 HAS ALREADY

12:12PM 19 BEEN ADMITTED INTO EVIDENCE.

12:12PM 20 MAY I PUBLISH?

12:12PM 21 THE COURT: I DON'T SEE IT IN THE GOVERNMENT'S

12:12PM 22 BINDER.

12:12PM 23 MS. ROBINSON, DO YOU SHOW THAT AS BEING ADMITTED?

12:12PM 24 THE CLERK: I HAVE TO LOOK IN THE PAST, YOUR HONOR.

12:12PM 25 NOT YESTERDAY.

12:12PM 1 THE COURT: I THINK IT MAY HAVE BEEN.

12:12PM 2 MR. BOSTIC: YOUR HONOR, I SHOW THAT EXHIBIT AS
12:12PM 3 HAVING BEEN ADMITTED.

12:12PM 4 THE COURT: I THINK MR. BOSTIC ADMITTED IT ACCORDING
12:12PM 5 TO MY NOTES, SO IT CAN BE PUBLISHED.
12:13PM 6 BY MR. CAZARES:

12:13PM 7 Q. AND DO YOU SEE UP ON THE SCREEN EXHIBIT 1548, DR. PANDORI?

12:13PM 8 A. IF WHAT IS ON MY SCREEN IS 1548, THEN YEAH.

12:13PM 9 Q. OKAY. AND THE COVER PAGE IS AN EMAIL FROM LANGLEY GEE TO
12:13PM 10 AURELIE SOUPPE, ERIKA CHEUNG, JAMIE LIU, AND ROMINA RIENER.

12:13PM 11 DO YOU SEE THAT?

12:13PM 12 A. YES.

12:13PM 13 Q. AND THEY WERE EACH LAB ASSISTANTS IN THE CLINICAL LAB
12:13PM 14 DURING THE TIME PERIOD THAT YOU WORKED AT THERANOS?

12:13PM 15 A. CORRECT.

12:13PM 16 Q. AND THIS IS FEBRUARY 19TH, 2014.

12:13PM 17 DO YOU SEE THAT?

12:13PM 18 A. YES.

12:13PM 19 Q. AND THAT'S AROUND THE TIME PERIOD OF THIS EXPERIMENT
12:13PM 20 RELATING TO THE NEW YORK PROFICIENCY TESTING SAMPLES?

12:13PM 21 A. I THINK SO.

12:13PM 22 Q. AND IF WE CAN GO TO THE NEXT PAGE.

12:13PM 23 DO YOU SEE THE DATE UP ON THE SCREEN IN THE SPREADSHEET?

12:13PM 24 A. YES.

12:13PM 25 Q. AND THIS WAS SOMEWHAT DISCUSSED IN YOUR DIRECT

12:14PM 1
12:14PM 2
12:14PM 3
12:14PM 4
12:14PM 5
12:14PM 6
12:14PM 7
12:14PM 8
12:14PM 9
12:14PM 10
12:14PM 11
12:14PM 12
12:14PM 13
12:14PM 14
12:14PM 15
12:14PM 16
12:14PM 17
12:14PM 18
12:14PM 19
12:14PM 20
12:14PM 21
12:14PM 22
12:14PM 23
12:14PM 24
12:14PM 25

EXAMINATION.

DO YOU REMEMBER THAT?

A. I DO.

Q. AND THESE ARE THE VALUES, THE RESULTS FROM THE NEW YORK
PROFICIENCY TESTING EXPERIMENT; CORRECT?

A. YES.

Q. AGAIN TO RECAP, SO THE EXPERIMENT WAS RUNNING THE NEW YORK
SAMPLES ON THE FDA APPROVED GOLD STANDARD AS WELL AS RUNNING
THE SAME SAMPLES ON THE EDISON DEVICE AND COMPARING THE RESULTS
FROM THE TWO; CORRECT?

A. MORE PRECISELY WHAT IS INTENDED IS THAT THE SPECIMENS ARE
TREATED THE SAME WAY AS PATIENT SPECIMENS, NOT NECESSARILY JUST
RUN ON THE DEVICES.

Q. AND I THINK YOU ALREADY TESTIFIED THAT YOU YOURSELF DIDN'T
PROCESS THE SAMPLES FOR THE PURPOSE OF THE EXPERIMENT; CORRECT?

A. CORRECT.

Q. OKAY. SO YOU DON'T KNOW WHETHER THE SPECIMENS WERE
HANDLED IN THE SAME WAY AS A PATIENT SAMPLE WOULD BE HANDLED;
CORRECT?

A. CORRECT.

Q. OKAY. OTHER PEOPLE DID THAT?

A. YES.

Q. OKAY. THE DATA WAS JUST PRESENTED TO YOU?

A. THAT'S CORRECT.

Q. OKAY. BUT THE SPREADSHEET IS REFLECTING OR REPORTING TO

12:15PM 1 REFLECT THE RESULTS COMPARING THE EDISON RESULTS TO THE FDA

12:15PM 2 GOLD STANDARD AS YOU'VE SAID; CORRECT?

12:15PM 3 A. CORRECT.

12:15PM 4 Q. NOW, GETTING BACK TO THE SPREADSHEET AND SOME OF THE

12:15PM 5 NUMBERS. I THINK IN YOUR TESTIMONY YOU REVIEWED THIS WITH THE

12:15PM 6 GOVERNMENT AND COMPARED, FOR EXAMPLE, VITAMIN D, THE NUMBERS

12:15PM 7 FOR THE PREDICATE, EVENTS 06, 07, 08, 09, 10.

12:15PM 8 DO YOU SEE THAT?

12:15PM 9 A. YES.

12:15PM 10 Q. AND COMPARED TO THE THERANOS RESULTS BENEATH ON ROW 3 FOR

12:15PM 11 THE SAME EVENTS 6, 7, 8, 9, AND 10.

12:15PM 12 DO YOU SEE THAT?

12:15PM 13 A. YES.

12:15PM 14 Q. AND YOU WERE ASKED QUESTIONS ABOUT THE DIFFERENCES AND

12:15PM 15 WHAT RECOVERY MEANT AND THINGS LIKE THAT.

12:15PM 16 DO YOU RECALL THAT?

12:15PM 17 A. NOBODY ASKED ME WHAT RECOVERY MEANT, BUT I THINK I WAS

12:15PM 18 ASKED TO COMMENT ON THEM.

12:15PM 19 Q. NOW, WITH RESPECT TO THE TPSA IN THE NEXT CATEGORY OF

12:16PM 20 RESULTS, AGAIN, THE SPREADSHEET REFLECTS NEW YORK TM 267, 268,

12:16PM 21 269, AND 270.

12:16PM 22 DO YOU SEE THAT?

12:16PM 23 A. YES.

12:16PM 24 Q. AND THAT'S THE TYPICAL FIVE SAMPLES FOR THE PT CHALLENGE

12:16PM 25 IF YOU WILL?

12:16PM 1 A. PROBABLY.

12:16PM 2 Q. AND THEN FOR EACH OF THE COLUMNS REFLECTING THE RESULTS

12:16PM 3 FOR EACH OF THE DIFFERENT FIVE SAMPLE CHALLENGES; CORRECT?

12:16PM 4 A. YES.

12:16PM 5 Q. OKAY. NOW, FOR THE SPREADSHEET, IF YOU LOOK AT COLUMNS E

12:16PM 6 AND F -- WELL, ACTUALLY E AND G FOR THE TPSA AND EVEN THE FT4

12:16PM 7 AND TSH.

12:17PM 8 DO YOU SEE THOSE COLUMNS E AND G?

12:17PM 9 A. YES.

12:17PM 10 Q. EACH OF THEM REFLECT THE PREDICATE AND THE THERANOS

12:17PM 11 NUMBERS AND THEN SOMETHING CALLED RECOVERY COMPARING THE TWO?

12:17PM 12 A. YES.

12:17PM 13 Q. AND FOR EACH OF COLUMNS E AND G, THERE'S A COUPLE OF

12:17PM 14 NUMBERS HIGHLIGHTED, BUT THERE'S ONLY TWO NUMBERS HIGHLIGHTED.

12:17PM 15 DO YOU SEE THAT?

12:17PM 16 A. YES.

12:17PM 17 Q. AND THOSE APPEAR TO BE UNDER THE RERUN COLUMN; CORRECT?

12:17PM 18 A. THEY ARE.

12:17PM 19 Q. OKAY. BUT UNDER COLUMNS E AND G, ONLY THE PREDICATE

12:17PM 20 NUMBERS ARE HIGHLIGHTED FOR THE TPSA.

12:17PM 21 DO YOU SEE THAT?

12:17PM 22 A. YEAH, I DO.

12:17PM 23 Q. SO FOR -- AND THE RERUN IN LAB PARLANCE MEANS THE SAMPLE

12:17PM 24 WAS RUN, SOME ISSUE, OBVIOUSLY WE CAN'T KNOW THAT HERE,

12:17PM 25 OCCURRED, AND IT WAS RERUN; CORRECT?

12:17PM 1

A. YES.

12:17PM 2

Q. AND THAT HAPPENS IN CLINICAL LABS; CORRECT?

12:17PM 3

A. IT DOES HAPPEN.

12:17PM 4

Q. OKAY. AND AGAIN, GETTING BACK TO COLUMNS E AND G, THE

12:17PM 5

ONLY NUMBERS THAT ARE HIGHLIGHTED FOR THE TPSA ARE THE

12:18PM 6

PREDICATE NUMBER AND THE -- THE PREDICATE NUMBER OF 3.1 AND 7.5

12:18PM 7

FOR COLUMNS E AND G.

12:18PM 8

DO YOU SEE THAT?

12:18PM 9

A. YES.

12:18PM 10

Q. AND THOSE ARE RUN ON THE GOLD STANDARD, THE FDA GOLD

12:18PM 11

STANDARD; CORRECT?

12:18PM 12

A. YES.

12:18PM 13

Q. OKAY. YOU WOULD AGREE WITH ME THERE'S NO REASON WHY YOU

12:18PM 14

WOULD RERUN THE PT ON THE FDA GOLD STANDARD IN DOING THE

12:18PM 15

COMPARISON; CORRECT?

12:18PM 16

A. THERE'S NO REASON TO RERUN ON THE FDA GOLD STANDARD?

12:18PM 17

Q. CORRECT?

12:18PM 18

A. I DON'T KNOW WHAT THE REASON WHY WAS THIS RERUN.

12:18PM 19

Q. WELL, LET ME BACK UP THOUGH.

12:18PM 20

DO YOU IN FACT KNOW YOURSELF, SETTING ASIDE THE

12:18PM 21

SPREADSHEET, THAT THE FDA GOLD STANDARD DEVICE WAS USED TO

12:18PM 22

RERUN THE TWO SAMPLES FOR TPSA AS REFLECTED IN COLUMNS E AND G?

12:18PM 23

A. THE SAME PREDICATE METHOD THAT WAS RUN INITIALLY?

12:18PM 24

Q. I'M ASKING YOU DO YOU KNOW YOURSELF WHETHER RERUNS WERE

12:18PM 25

ACTUALLY DONE ON THE PREDICATE METHOD?

12:19PM 1 A. DO I KNOW MYSELF?

12:19PM 2 BASED ON WHAT I'M LOOKING AT --

12:19PM 3 Q. THAT'S NOT WHAT I'M ASKING. THAT'S NOT WHAT I'M ASKING

12:19PM 4 YOU, SIR.

12:19PM 5 I'M ASKING UNDER THE RERUN COLUMN THERE ARE ONLY TWO

12:19PM 6 NUMBERS HIGHLIGHTED; CORRECT?

12:19PM 7 A. CORRECT.

12:19PM 8 Q. AND IT'S 3.1 AND 7.5; CORRECT?

12:19PM 9 A. YES.

12:19PM 10 Q. AND THOSE NUMBERS ARE THE EXACT SAME AS WHAT IS REFLECTED

12:19PM 11 IN COLUMN D AND IN COLUMN F; CORRECT?

12:19PM 12 A. CORRECT.

12:19PM 13 Q. OKAY. BUT IN THIS PT COMPARISON COMPARING THE PREDICATE

12:19PM 14 GOLD TO THE EDISON DEVICE, YOU'RE NOT AWARE OF THE FACT AND

12:19PM 15 DON'T KNOW THAT THE PT SAMPLE WAS RUN TWICE ON THE FDA GOLD

12:19PM 16 STANDARD FOR THE TPSA AS REFLECTED IN COLUMNS E AND G; CORRECT?

12:19PM 17 A. YOU'RE ASKING ME WHETHER I KNOW IT. THERE'S EVIDENCE IN

12:19PM 18 FRONT OF ME THAT IT WAS RERUN ON THAT DEVICE BECAUSE THERE'S

12:19PM 19 NOT TWO LINES FOR PREDICATE THERE, THERE'S ONLY ONE.

12:19PM 20 Q. THAT'S NOT WHAT I'M ASKING YOU.

12:19PM 21 WHAT I'M ASKING YOU FOR COLUMN E, WHICH IS THE RERUN

12:20PM 22 COLUMN, THERE'S ONLY TWO NUMBERS HIGHLIGHTED; CORRECT?

12:20PM 23 A. CORRECT.

12:20PM 24 Q. AND THAT'S THE PREDICATE VALUES?

12:20PM 25 A. YES.

12:20PM 1 Q. AND YOU WOULD AGREE WITH ME THAT THE THERANOS VALUES ON
12:20PM 2 COLUMNS E AND G, THOSE ARE VALUES, ACCORDING TO THE
12:20PM 3 SPREADSHEETS, FROM A RERUN, ACCORDING AT LEAST AS FAR AS THE
12:20PM 4 SPREADSHEET IS CONCERNED; CORRECT?

12:20PM 5 A. AS FAR AS THE SPREADSHEET IS CONCERNED THOSE ARE IN A
12:20PM 6 RERUN COLUMN.

12:20PM 7 Q. OKAY. AND THEY'RE DISTINGUISHED FROM THE PREDICATE COLUMN
12:20PM 8 BY THE HIGHLIGHTS TO THE PREDICATE DEVICE; CORRECT?

12:20PM 9 A. THEY'RE DISTINGUISHED VISUALLY BY THE FACT THAT SOME ARE
12:20PM 10 HIGHLIGHTED AND SOME ARE NOT.

12:20PM 11 Q. DESPITE THE FACT THAT THEY'RE EACH IN THE SAME RERUN
12:20PM 12 COLUMN WITHIN THE SPREADSHEET; CORRECT?

12:20PM 13 A. THAT'S CORRECT.

12:20PM 14 Q. AND YOU WOULD AGREE WITH ME THAT THE FDA APPROVED GOLD
12:20PM 15 STANDARD IS A MORE RELIABLE DEVICE; CORRECT?

12:20PM 16 A. YES.

12:20PM 17 Q. AND WITHIN THIS -- WITHIN THE SCOPE OF THIS TEST, THERE
12:20PM 18 WAS NO REASON TO RERUN THE FDA APPROVED DEVICE USING THE
12:20PM 19 PROFICIENCY TESTING SAMPLE FOR THIS EXPERIMENT?

12:21PM 20 MR. BOSTIC: I'M SORRY. OBJECTION. FOUNDATION.
12:21PM 21 CALLS FOR SPECULATION GIVEN THAT HE DIDN'T PERSONALLY CONDUCT
12:21PM 22 THE TEST.

12:21PM 23 THE COURT: I THINK THAT IS WHAT THE EARLIER
12:21PM 24 TESTIMONY IS. MAYBE YOU SHOULD CLEAR THAT UP. I'M NOT
12:21PM 25 CERTAIN.

12:21PM 1 DO YOU UNDERSTAND THE QUESTION, SIR?

12:21PM 2 THE WITNESS: I BELIEVE I UNDERSTAND THE QUESTION.

12:21PM 3 THE COURT: LET'S HAVE -- WHY DON'T YOU ASK IT AGAIN
12:21PM 4 JUST FOR CLARITY.

12:21PM 5 BY MR. CAZARES:

12:21PM 6 Q. AGAIN, YOU'VE TESTIFIED ALREADY THAT THE FDA APPROVED GOLD
12:21PM 7 STANDARD IS A MORE RELIABLE DEVICE THAN THE EDISON IN YOUR
12:21PM 8 VIEW?

12:21PM 9 A. YES.

12:21PM 10 Q. AND IN THE CONTEXT OF THIS EXPERIMENT, TRYING TO COMPARE
12:21PM 11 THE EDISON TO THE GOLD STANDARD, THERE'S NO REASON TO RETEST
12:21PM 12 THE SAMPLE ON THE GOLD STANDARD IN THIS EXPERIMENT; CORRECT?

12:21PM 13 A. THERE MAY HAVE BEEN A REASON FOR THE TECHNICIAN TO RERUN
12:21PM 14 IT, BUT BECAUSE I DIDN'T OBSERVE THE TECHNICIAN OR RUN THESE
12:21PM 15 SPECIMENS, I DON'T KNOW WHAT THE RATIONALE WAS.

12:21PM 16 Q. BUT YOU DON'T ACTUALLY KNOW THAT THEY WERE RERUN, CORRECT,
12:21PM 17 SETTING THE SPREADSHEET ASIDE?

12:21PM 18 A. YOU'RE ASKING ME IF I HAVE VISUAL EVIDENCE OF THAT?

12:22PM 19 Q. YES.

12:22PM 20 A. NO, I DON'T KNOW.

12:22PM 21 Q. AND YOU DIDN'T RUN THE SAMPLES YOURSELF?

12:22PM 22 A. I DID NOT RUN THE SAMPLES MYSELF.

12:22PM 23 Q. OKAY. AND YOU DIDN'T PUT THE SPREADSHEET TOGETHER?

12:22PM 24 A. I DIDN'T WHAT?

12:22PM 25 Q. YOU DIDN'T PUT THE SPREADSHEET TOGETHER?

12:22PM 1
12:22PM 2
12:22PM 3
12:22PM 4
12:22PM 5
12:22PM 6
12:22PM 7
12:22PM 8
12:23PM 9
12:23PM 10
12:23PM 11
12:23PM 12
12:23PM 13
12:23PM 14
12:23PM 15
12:23PM 16
12:23PM 17
12:23PM 18
12:23PM 19
12:23PM 20
12:23PM 21
12:23PM 22
12:23PM 23
12:23PM 24
12:23PM 25

A. I DID NOT.

Q. OKAY. YOU CAN SET THAT ASIDE.

DR. PANDORI, IF YOU CAN TAKE A LOOK AT EXHIBIT 1580, WHICH IS ALREADY IN EVIDENCE AND IT'S IN VOLUME 1.

YOUR HONOR, MAY I PUBLISH?

THE COURT: YES.

MR. CAZARES: IT'S IN THE GOVERNMENT'S VOLUME 1.

THE WITNESS: DID YOU SAY 15E?

MR. CAZARES: 1580 IN THE GOVERNMENT'S BINDER.

THE WITNESS: 80.

THE COURT: IT'S ALSO ON YOUR SCREEN.

THE WITNESS: OH, I'VE GOT IT.

BY MR. CAZARES:

Q. DO YOU HAVE THAT IN FRONT OF YOU?

A. YES.

Q. OKAY. AND STARTING AT 1580 IS AN EMAIL EXCHANGE CHAIN, THE LATTER OF WHICH AT THE TOP IS FEBRUARY 25, 2014, A MESSAGE FROM MR. BALWANI TO DR. ROSENDORFF.

DO YOU SEE THAT?

A. YES.

Q. OKAY. AND THIS IS A DOCUMENT DISCUSSED IN YOUR DIRECT EXAM YESTERDAY?

A. YES.

Q. AND THIS IS SUBSEQUENT TO THE NEW YORK PROFICIENCY TESTING EXPERIMENT THAT WE JUST DISCUSSED?

12:23PM 1 A. EXCUSE ME. YES.

12:23PM 2 Q. OKAY. AND YOU HAD MENTIONED BEFORE THAT AT THE TIME THE

12:24PM 3 EXPERIMENT WAS DONE, YOU WERE UNAWARE OF THE SOP THAT

12:24PM 4 DR. ROSENDORFF HAD ALREADY APPROVED FOR AAP; CORRECT?

12:24PM 5 A. CORRECT.

12:24PM 6 Q. OKAY. AND TURNING TO PAGE 5 WITHIN EXHIBIT 1580. WE'LL

12:24PM 7 PUT IT UP ON THE SCREEN.

12:24PM 8 A. YES.

12:24PM 9 Q. THERE'S A MESSAGE FROM DR. DANIEL YOUNG TO DR. ROSENDORFF

12:24PM 10 COPYING MS. HOLMES AND MR. BALWANI REGARDING PROFICIENCY

12:24PM 11 TESTING FOR LDT'S.

12:24PM 12 DO YOU SEE THAT?

12:24PM 13 A. YES.

12:24PM 14 Q. AND THAT'S BEFORE YOU JOINED THERANOS; CORRECT?

12:24PM 15 A. IT IS.

12:24PM 16 THE COURT: DOES SOMEONE HAVE A PHONE ON? I HEAR A

12:25PM 17 RING. IF EVERYONE COULD CHECK YOUR DEVICES, PLEASE.

12:25PM 18 (CELL PHONE RINGING.)

12:25PM 19 THE COURT: I'M SORRY, COUNSEL. GIVE ME A MOMENT

12:25PM 20 HERE.

12:25PM 21 CAN WE RESET THE SYSTEM?

12:25PM 22 THE CLERK: I CAN.

12:25PM 23 THE COURT: I'M SORRY.

12:25PM 24 FOLKS, FEEL FREE TO STAND UP AND STRETCH FOR A MOMENT IF

12:26PM 25 YOU WOULD LIKE.

12:26PM 1
12:26PM 2
12:26PM 3
12:26PM 4
12:26PM 5
12:26PM 6
12:26PM 7
12:26PM 8
12:27PM 9
12:27PM 10
12:27PM 11
12:27PM 12
12:27PM 13
12:27PM 14
12:27PM 15
12:27PM 16
12:27PM 17
12:27PM 18
12:27PM 19
12:27PM 20
12:27PM 21
12:27PM 22
12:27PM 23
12:27PM 24
12:27PM 25

(STRETCHING.)

THE COURT: LET'S TRY IT AGAIN. THANK YOU. I
APOLOGIZE FOR THE INCONVENIENCE.

MR. CAZARES: GREAT. THANK YOU, YOUR HONOR.

Q. RETURNING BACK TO EXHIBIT 1580 THAT IS ON THE SCREEN,
DR. PANDORI.

WE JUST REFERENCED THE MESSAGE FROM DANIEL YOUNG TO
DR. ROSENDORFF ON NOVEMBER 26TH, 2013.

BUT IF WE TURN THE PAGE TO PAGE 4, THERE'S A MESSAGE IN
THE BOTTOM QUARTILE FROM DR. YOUNG TO YOURSELF FEBRUARY 24TH,
2014.

DO YOU SEE THAT?

A. I SEE IT.

Q. AND THIS IS DR. YOUNG FORWARDING THE PRIOR EMAIL STRING TO
YOU, AND HE WRITES, "FYI: AS BACKGROUND"?

A. I SEE IT.

Q. AND THIS WAS PART OF THE DISCUSSIONS AND COMMUNICATIONS
GOING ON IN THE LAB RELATING TO THIS NEW YORK PROFICIENCY
TESTING EXPERIMENT; CORRECT?

A. YES.

Q. AND THIS IS DR. YOUNG FORWARDING TO YOU THE BACKGROUND TO
THE IMPLEMENTATION OF AN AAP PROGRAM AT THERANOS; CORRECT?

A. WHAT WAS THAT?

Q. THE EMAIL REFLECTS DR. YOUNG FORWARDING TO YOU BACKGROUND
DISCUSSIONS PRIOR TO YOUR JOINING THERANOS RELATING TO THE AAP

12:27PM 1 PROGRAM?

12:27PM 2 A. IT LOOKS THAT WAY.

12:27PM 3 Q. AND RETURNING BACK TO THE MESSAGE ON PAGE 5 FROM DR. YOUNG

12:28PM 4 TO DR. ROSENDORFF, ELIZABETH HOLMES, AND SUNNY BALWANI.

12:28PM 5 WITHIN THE MESSAGE DR. YOUNG IS EXPLAINING KIND OF

12:28PM 6 PROVIDING HIS VIEW AS TO WHY AN AAP PROGRAM WAS APPROPRIATE.

12:28PM 7 DO YOU SEE THAT?

12:28PM 8 A. YES.

12:28PM 9 Q. OKAY. AND YOU REVIEWED THIS CONTEMPORANEOUSLY IN FEBRUARY

12:28PM 10 OF 2014 WHEN YOU WERE AT THERANOS; CORRECT?

12:28PM 11 A. THIS EMAIL WAS SENT TO ME.

12:28PM 12 Q. AND DID YOU REVIEW IT?

12:28PM 13 A. PROBABLY.

12:28PM 14 Q. FOCUSING ON THE SECOND PARAGRAPH FROM DR. YOUNG TO

12:28PM 15 DR. ROSENDORFF COPYING MR. BALWANI AND MS. HOLMES, DO YOU SEE

12:28PM 16 UNDER THE -- THAT PARAGRAPH STARTING "FOR OUR LDT'S, ALL OF

12:28PM 17 WHICH ARE CLIA REGULATED AT THE MOMENT, WE NEED SOP'S FOR PT."

12:29PM 18 DO YOU SEE THAT?

12:29PM 19 A. YEAH, I SEE THAT.

12:29PM 20 Q. AND THEN HE WROTE, "HOWEVER, THERE ARE SEVERAL FACTORS

12:29PM 21 THAT PREVENT US FROM ENROLLING IN THE TRADITIONAL PT PROGRAM."

12:29PM 22 DO YOU SEE THAT AS WELL?

12:29PM 23 A. THIS IS ON PAGE 5.

12:29PM 24 Q. PAGE 5, SECOND PARAGRAPH, FULL PARAGRAPH.

12:29PM 25 A. THIS IS FROM -- TO ADAM ROSENDORFF?

12:29PM 1 Q. IT IS UP ON THE SCREEN AS WELL IF THAT WILL HELP.

12:29PM 2 A. FROM DANIEL YOUNG?

12:29PM 3 Q. YES.

12:29PM 4 A. YES, I SEE THAT.

12:29PM 5 Q. AND EXPLAINING WHY THERE ARE SEVERAL FACTS THAT PREVENT

12:29PM 6 US, THERANOS, FROM ENROLLING IN TRADITIONAL PT PROGRAMS,

12:29PM 7 DR. YOUNG INFORMS DR. ROSENDORFF, "A PEER GROUP MOST

12:29PM 8 SIGNIFICANTLY IS THAT A PERFORMANCE IN PT SURVEYS IS BASED ON

12:29PM 9 AN EVALUATION AGAINST A PEER GROUP."

12:29PM 10 DO YOU SEE THAT?

12:29PM 11 A. I SEE THAT.

12:29PM 12 Q. AND IT GOES ON, "A PEER GROUP IS COMPOSED OF DIFFERENT

12:29PM 13 LABS ALL RUNNING IN THE SAME METHOD/DEVICE."

12:29PM 14 A. I SEE THAT.

12:29PM 15 Q. "THE GOALS OF SUCH PT IS TO COMPARE THE PERFORMANCE OF AN

12:30PM 16 INDIVIDUAL LABORATORY TO THEIR PEER GROUP AND SOMETIMES TO

12:30PM 17 TARGET VALUES ESTABLISHED BY REFERENCE METHODS OR REFERENCE

12:30PM 18 LABORATORIES."

12:30PM 19 DO YOU SEE THAT?

12:30PM 20 A. I SEE THAT.

12:30PM 21 Q. AND THIS IS ADVICE BEING PROVIDED BY DR. YOUNG TO

12:30PM 22 DR. ROSENDORFF AND COPYING MS. HOLMES AND MR. BALWANI.

12:30PM 23 DO YOU SEE THAT?

12:30PM 24 A. YES.

12:30PM 25 Q. AND YOU WEREN'T PRESENT AT THE TIME; CORRECT?

12:30PM 1 A. CORRECT.

12:30PM 2 Q. OKAY. AND ULTIMATELY DR. ROSENDORFF ACCEPTED DR. YOUNG'S

12:30PM 3 RATIONALE AND IMPLEMENTED AN SOP FOR AAP FOR THE EDISON IN

12:30PM 4 DECEMBER OF 2013; CORRECT?

12:30PM 5 A. I DON'T KNOW WHAT YOU MEAN BY "IMPLEMENTED" BECAUSE THIS

12:30PM 6 WASN'T DONE ON THOSE SPECIMENS.

12:30PM 7 Q. DR. ROSENDORFF SIGNED OFF AND APPROVED AN SOP FOR AAP FOR

12:30PM 8 THE EDISON PROFICIENCY TESTING; CORRECT?

12:30PM 9 A. WE SAW THAT IN AN EARLIER DOCUMENT.

12:30PM 10 Q. CORRECT.

12:30PM 11 A. CORRECT.

12:30PM 12 Q. AND SO YOU WOULD AGREE WITH ME, DR. ROSENDORFF ACCEPTED

12:30PM 13 DR. YOUNG'S ADVICE; CORRECT?

12:30PM 14 A. I PARSED YOUR WORDS. I AGREE WITH ACCEPTED, NOT

12:31PM 15 IMPLEMENTED.

12:31PM 16 Q. AND THE PERSON RESPONSIBLE FOR IMPLEMENTING THE AAP

12:31PM 17 PROGRAM WITHIN THE CLINICAL LAB WAS --

12:31PM 18 (CELL PHONE RINGING.)

12:31PM 19 BY MR. CAZARES:

12:31PM 20 Q. WE'RE ALL GOOD. IT HAPPENS ALL OF THE TIME.

12:31PM 21 THE PERSON RESPONSIBLE FOR IMPLEMENTING THE AAP PROGRAM

12:31PM 22 WITHIN THE CLINICAL LAB WAS THE CLIA LAB DIRECTOR,

12:31PM 23 ADAM ROSENDORFF; CORRECT?

12:31PM 24 A. CORRECT.

12:31PM 25 Q. UNDER -- CONTINUING WITH DR. YOUNG'S EMAIL MESSAGE TO

12:31PM 1 DR. ROSENDORFF UNDER PROPOSAL.

12:31PM 2 AGAIN, DR. ROSENDORFF WRITES, "WHERE TRADITIONAL PT
12:31PM 3 OPTIONS ARE NOT AVAILABLE, WE MUST INITIATE ALTERNATIVE
12:32PM 4 ASSESSMENT PROCEDURE. NAMELY, FOR NON-CMS-REGULATED TESTS, FOR
12:32PM 5 THOSE TESTS WHICH LACK FDA CLEARANCE OR FOR TESTS THAT LACK A
12:32PM 6 SUITABLE PEER GROUP, COMMERCIAL OR EXTERNAL PT PROGRAMS ARE NOT
12:32PM 7 AVAILABLE AND AAP ARE USED TO HELP ASSESS THE QUALITY/ACCURACY
12:32PM 8 OF LABORATORY TEST SYSTEM PERFORMANCE."

12:32PM 9 DO YOU SEE THAT?

12:32PM 10 A. YES. YOU SAID DR. ROSENDORFF SAID THAT.

12:32PM 11 Q. THIS WAS IN DR. YOUNG'S EMAIL.

12:32PM 12 DO YOU SEE THAT?

12:32PM 13 A. YES.

12:32PM 14 Q. OKAY. TURNING TO PAGE 3 OF THE EMAIL CHAIN.

12:32PM 15 A. YES.

12:32PM 16 Q. AND ON THIS PORTION OF THE CHAIN, YOU'RE ON THE MESSAGE AT
12:32PM 17 THE BOTTOM THIRD ABOUT -- FROM DR. YOUNG TO MR. BALWANI,
12:33PM 18 LANGLEY GEE, COPYING YOU, DR. ROSENDORFF, AND SAMARTHA ANEKAL.

12:33PM 19 DO YOU SEE THAT?

12:33PM 20 A. YES.

12:33PM 21 Q. FEBRUARY 24TH, 2014, AGAIN.

12:33PM 22 AND IN THIS MESSAGE DR. YOUNG ADVISES, "WE ALSO NEED
12:33PM 23 INFORMATION ABOUT THE PT SAMPLES, SUCH AS WHAT MATRIX WHERE
12:33PM 24 THEY, DID THEY HAVE ANTICOAGULANT IN THEM, ET CETERA. THESE PT
12:33PM 25 SAMPLES ARE USUALLY FORMULATED WITH CERTAIN TEST SYSTEMS IN

12:33PM 1 MIND, WHICH IS ONE OF THE REASONS I AM NOT COMFORTABLE USING
12:33PM 2 THEM WITHOUT A PEER GROUP. OTHERWISE, WE HAVE TO DO EXTENSIVE
12:33PM 3 STUDY TO UNDERSTAND OUR THESE PT SAMPLES MAY PERFORM
12:33PM 4 DIFFERENTLY ON OUR SYSTEM VERSUS ONE OF THE SO-CALLED
12:33PM 5 CLUNKERS."

12:33PM 6 DO YOU SEE THAT?

12:33PM 7 A. I SEE THAT.

12:33PM 8 Q. AND AGAIN, THIS IS ADVICE COMING FROM DR. YOUNG TO
12:33PM 9 MR. BALWANI, MR. GEE, AND COPYING YOURSELF AND DR. ROSENDORFF?

12:33PM 10 A. THAT'S RIGHT.

12:33PM 11 Q. AND DID YOU DISAGREE WITH DR. YOUNG REGARDING THE IMPACT
12:33PM 12 OR POTENTIAL IMPACT OF MATRIX EFFECT ON THE JUSTIFICATION FOR
12:34PM 13 USING AAP FOR THE EDISON?

12:34PM 14 A. IN MY FIELD I NEITHER AGREE OR DISAGREE WITH THINGS LIKE
12:34PM 15 THIS UNTIL I HAVE DATA TO DO SO.

12:34PM 16 AND DANIEL YOUNG --

12:34PM 17 Q. I APOLOGIZE. CONTINUE.

12:34PM 18 A. DANIEL YOUNG, TO MY KNOWLEDGE, IS NOT A DOCTOR OF
12:34PM 19 BIOCHEMISTRY, CHEMISTRY, BIOLOGY, OR MEDICINE.

12:34PM 20 Q. YOU IDENTIFIED HIM PREVIOUSLY IN YOUR TESTIMONY YESTERDAY,
12:34PM 21 I THINK, AS SOMEONE WHO CONSULTED WITH MANAGEMENT, WITH
12:34PM 22 DR. ROSENDORFF WHO WAS A KIND OF FIXER WITHIN THE COMPANY;
12:34PM 23 CORRECT?

12:34PM 24 A. I DON'T KNOW THAT I USED THE WORD "FIXER."

12:34PM 25 I'M SORRY, I DON'T EVEN RECALL WHAT I REFERRED TO HIM AS,

12:34PM 1 BUT I THINK HE -- MY MEMORY OF HIM WAS THAT HE WAS TRAINED IN
12:34PM 2 MATHEMATICS OR COMPUTER SCIENCE.

12:34PM 3 Q. A PH.D. AT M.I.T.?

12:34PM 4 A. I SEE.

12:34PM 5 Q. YOU UNDERSTOOD THAT AT THE TIME?

12:34PM 6 A. NO.

12:34PM 7 Q. OKAY. CONTINUING WITH THE SAME EXHIBIT TO THE TOP PAGE OF
12:35PM 8 THE FIRST PAGE, AND I THINK YOU DISCUSSED THIS WITH GOVERNMENT
12:35PM 9 COUNSEL YESTERDAY.

12:35PM 10 THIS IS THE MESSAGE FROM MR. BALWANI TO DR. ROSENDORFF,
12:35PM 11 YOURSELF, DANIEL YOUNG, LANGLEY GEE, COPYING OTHERS ON
12:35PM 12 FEBRUARY 25, 2014.

12:35PM 13 DO YOU SEE THAT?

12:35PM 14 A. YES.

12:35PM 15 Q. AT THE TOP.

12:35PM 16 AND THIS IS THE MESSAGE WHERE MR. BALWANI STARTED, "I ALSO
12:35PM 17 WANT TO REITERATE THIS POINT. I AM EXTREMELY IRRITATED AND
12:35PM 18 FRUSTRATED BY FOLKS WITH NO LEGAL BACKGROUND TAKING LEGAL
12:35PM 19 POSITIONS AND INTERPRETATIONS ON THESE MATTERS AND JUNIOR CLIA
12:35PM 20 AND NON-CLIA PERSONNEL CHALLENGING OUR CLIA SOP'S."

12:35PM 21 DID YOU HEAR THAT? DID YOU SEE THAT? I'M SORRY.

12:35PM 22 A. BOTH, YES.

12:35PM 23 Q. OKAY. AND THE CLIA SOP THAT IS BEING REFERENCED IS THIS
12:35PM 24 ISSUE OF THE AAP SOP FOR THE EDISON DEVICE; CORRECT?

12:36PM 25 A. IT'S IN REFERENCE TO THE PROFICIENCY TESTING ISSUE THAT

12:36PM 1 WE'VE BEEN TALKING ABOUT.

12:36PM 2 Q. AND AMONG THE SOP'S AT ISSUE IS THE AAP SOP FOR THE

12:36PM 3 EDISON; CORRECT?

12:36PM 4 A. CORRECT.

12:36PM 5 Q. OKAY. AND THAT SOP YOU WERE UNAWARE OF WHEN YOU CONDUCTED

12:36PM 6 THE NEW YORK PROFICIENCY TESTING EXPERIMENT; CORRECT?

12:36PM 7 A. CORRECT.

12:36PM 8 Q. FOCUSING ON THE SECOND PARAGRAPH.

12:36PM 9 A. YES.

12:36PM 10 Q. NOW, MR. BALWANI WRITES, "THESE PAST FEW DAYS, WE HAVE

12:36PM 11 WASTED SO MUCH TIME TALKING TO PEOPLE OUTSIDE OF CLIA WHO HAVE

12:37PM 12 COME TO US TO SHARE THAT OUR PT ON VITAMIN D ON EDISON HAS

12:37PM 13 FAILED. THESE PT SAMPLES SHOULD HAVE NEVER RUN ON EDISONS TO

12:37PM 14 BEGIN WITH. WE SHOULD FOLLOW OUR SOP'S REGARDING PT."

12:37PM 15 DO YOU SEE THAT?

12:37PM 16 A. YES, I SEE IT.

12:37PM 17 Q. OKAY. YOU AGREED WITH MR. BALWANI'S MESSAGE IN THIS EMAIL

12:37PM 18 THAT WE, THERANOS, SHOULD FOLLOW OUR CURRENT SOP'S REGARDING

12:37PM 19 PT, PROFICIENCY TESTING?

12:37PM 20 A. YOU NEED SOME KIND OF PROFICIENCY TESTING FOR THESE

12:37PM 21 SPECIMENS.

12:37PM 22 Q. SO YOU AGREE WITH MR. BALWANI'S STATEMENT ON THAT POINT?

12:37PM 23 A. THAT THESE PT SAMPLES SHOULD NEVER HAVE RUN ON --

12:37PM 24 Q. THAT'S NOT WHAT I'M ASKING. I'M VERY SPECIFIC.

12:37PM 25 A. WHAT ARE YOU ASKING?

12:37PM 1 Q. DR. PANDORI, IN THE SECOND PARAGRAPH MR. BALWANI WROTE,
12:37PM 2 "WE SHOULD FOLLOW OUR CURRENT SOP'S REGARDING PT."

12:37PM 3 AND YOU UNDERSTAND THAT TO BE PROFICIENCY TESTING;
12:38PM 4 CORRECT?

12:38PM 5 A. CORRECT.

12:38PM 6 Q. OKAY. AND YOU AGREE WITH THAT STATEMENT BY MR. BALWANI?

12:38PM 7 A. AT THE TIME I DIDN'T KNOW WHAT THE SOP WAS, SO I COULD NOT
12:38PM 8 AGREE OR DISAGREE WITH THAT STATEMENT.

12:38PM 9 Q. SO REGARDLESS OF WHETHER DR. ROSENDORFF HAD IMPLEMENTED,
12:38PM 10 AUTHORIZED, APPROVED AN SOP FOR THE PROFICIENCY TESTING FOR THE
12:38PM 11 EDISON, YOU WOULD NOT AGREE THAT THE EXISTING LAB DIRECTOR
12:38PM 12 STANDARD OPERATING PROCEDURE SHOULD BE FOLLOWED?

12:38PM 13 A. THAT WOULD BE THE LAB DIRECTOR'S DECISION.

12:38PM 14 Q. OKAY. GETTING BACK TO THE FOURTH PARAGRAPH IN THAT
12:38PM 15 MESSAGE THAT WAS FOCUSSED ON BY MR. BOSTIC YESTERDAY.

12:38PM 16 IT READS AT THE TOP, "IT IS CRITICAL THAT IF ANYONE IN
12:38PM 17 CLIA OR OUTSIDE HAS ANY QUESTIONS, THEY ASK YOU (MARK AND ADAM)
12:38PM 18 AND THEY BE REFERRED TO THE SOP'S."

12:38PM 19 DO YOU SEE THAT?

12:39PM 20 A. YES.

12:39PM 21 Q. AND THE MARK IS REFERRING TO YOURSELF, DR. PANDORI;
12:39PM 22 CORRECT?

12:39PM 23 A. I THINK SO.

12:39PM 24 Q. AND THE ADAM IS DR. ROSENDORFF?

12:39PM 25 A. YES.

12:39PM 1 Q. AND YOU AGREE, MR. BALWANI IS CORRECT THAT QUESTIONS IN
12:39PM 2 CLIA REGARDING PROFICIENCY TESTING ISSUES SHOULD HAVE BEEN
12:39PM 3 DIRECTED AT THAT TIME TO DR. ROSENDORFF AND TO YOU; CORRECT?
12:39PM 4 A. CORRECT.
12:39PM 5 Q. AND THE CLINICAL LAB EMPLOYEES SHOULD BE DIRECTED TO THE
12:39PM 6 SOP'S REGARDING PROFICIENCY TESTING FOR ANY QUESTIONS; CORRECT?
12:39PM 7 A. CORRECT.
12:39PM 8 Q. SO YOU AGREE WITH WHAT MR. BALWANI IS WRITING HERE IN THIS
12:39PM 9 EMAIL; CORRECT?
12:39PM 10 A. WHAT PART OF THE EMAIL?
12:39PM 11 Q. WHAT I JUST READ, THAT THE EMPLOYEES SHOULD BE REFERRED TO
12:39PM 12 YOU AND DR. ROSENDORFF AND THE SOP'S REGARDING PROFICIENCY
12:39PM 13 TESTING?
12:39PM 14 A. THAT'S NOT WHAT IS HIGHLIGHTED HERE.
12:39PM 15 Q. I JUST ASKED THE QUESTION.
12:40PM 16 YOU AGREE WITH MR. BALWANI THAT EMPLOYEES WITHIN THE
12:40PM 17 CLINICAL LAB WHO HAD QUESTIONS SHOULD BE DIRECTED TO YOU,
12:40PM 18 DR. ROSENDORFF, AND THE SOP'S?
12:40PM 19 A. THEY SHOULD BE TO. OF COURSE THEY SHOULD BE DIRECTED TO
12:40PM 20 THE LAB DIRECTOR.
12:40PM 21 Q. YOU CAN SET THAT ASIDE.
12:40PM 22 IF YOU CAN TAKE A LOOK AT, AND IT'S ALREADY IN EVIDENCE,
12:40PM 23 AT EXHIBIT 1570.
12:40PM 24 YOUR HONOR, MAY WE PUBLISH? I THINK IT'S ALREADY IN
12:40PM 25 EVIDENCE?

12:40PM 1 THE COURT: YES.

12:40PM 2 MR. CAZARES: 1570.

12:40PM 3 Q. IT'S ALREADY ON THE SCREEN, DR. PANDORI, IF THAT IS
12:40PM 4 CONVENIENT.

12:40PM 5 1570 I BELIEVE IS ALSO A MESSAGE YOU COVERED YESTERDAY
12:40PM 6 WITH MR. BOSTIC, AND THE LATTER OF WHICH AT THE TOP OF THE
12:41PM 7 FIRST PAGE IS A FEBRUARY 25TH, 2014 EMAIL FROM YOURSELF TO
12:41PM 8 DR. ROSENDORFF.

12:41PM 9 DO YOU SEE THAT?

12:41PM 10 A. YES.

12:41PM 11 Q. AND I'M NOT GOING TO ASK YOU ABOUT IT BECAUSE WE JUST
12:41PM 12 DISCUSSED IT, BUT THIS IS A SUBSEQUENT MESSAGE WITHIN THIS
12:41PM 13 LARGER CHAIN REGARDING THE PROFICIENCY TESTING FOR LDT'S AS
12:41PM 14 REFLECTED IN THE SUBJECT LINE OF THE EMAIL?

12:41PM 15 A. YES.

12:41PM 16 Q. SO WE'RE TALKING ABOUT THE SAME SUBJECT THAT WE JUST
12:41PM 17 TALKED ABOUT A MINUTE OR TWO AGO?

12:41PM 18 A. YEAH, WE ARE.

12:41PM 19 Q. OKAY. IF YOU LOOK AT PAGE 3 OF THE EXHIBIT A MESSAGE FROM
12:42PM 20 MR. BALWANI TO DR. ROSENDORFF, DANIEL YOUNG, LANGLEY GEE COPYING
12:42PM 21 YOURSELF AND SAMARTHA ANEKAL.

12:42PM 22 DO YOU SEE THAT RIGHT IN THE MIDDLE OF THE PAGE?

12:42PM 23 A. YES.

12:42PM 24 Q. AND IN THE MESSAGE MR. BALWANI WROTE IN RESPONSE TO PRIOR
12:42PM 25 MESSAGES REGARDING THIS ISSUE, "AND OUR VALIDATION AGAINST

12:42PM 1 IMMULITE HAS BEEN EXCELLENT IN THE PAST. IT IS THESE PT
12:42PM 2 SAMPLES THAT ARE OFF."

12:42PM 3 AND THEN CONTINUING, "THIS IS A GREAT PLACE TO START IS
12:42PM 4 WHAT MARK, YOU AND I DISCUSSED TODAY -- TO RUN INTERNAL PT'S
12:42PM 5 HERE AND COMPARE WITH SAMPLES WE DRAW HERE. LET'S RUN FEW
12:42PM 6 STUDIES ON THESE 4-8 ASSAYS. I THINK OUR ANSWERS WILL BECOME
12:42PM 7 VERY CLEAR THAT WHAT DANIEL IS SUGGESTING IS ACCURATE."

12:42PM 8 DO YOU SEE THAT?

12:42PM 9 A. YES, I SEE THAT.

12:42PM 10 Q. AND THE MESSAGE, MR. BALWANI'S MESSAGE REFERENCES A
12:42PM 11 DISCUSSION BETWEEN HIMSELF, DR. ROSENDORFF, AND YOU REGARDING
12:43PM 12 ANOTHER QUALITY EXPERIMENT, IF YOU WILL, TO RUN INTERNAL PT'S
12:43PM 13 AND COMPARE SAMPLES, REAL SAMPLES WITHIN THE LAB; CORRECT?

12:43PM 14 A. IT'S TO RUN INTERNAL PT'S, CORRECT.

12:43PM 15 Q. AND YOU AGREED WITH THAT AT THE TIME?

12:43PM 16 A. WE HAD TO DO A PT SOMEHOW, AND AT THIS POINT YOU MAY
12:43PM 17 RECALL I WASN'T AWARE OF OUR SOP -- OF THE SOP YOU SHOWED ME
12:43PM 18 EARLIER, SO I'M TRYING TO WORK WITH EVERYBODY TO FIND A
12:43PM 19 SOLUTION TO THE PT COMPLEXITY THAT WE'RE FACING HERE.

12:43PM 20 SO I THOUGHT THAT ONE WAY WE COULD DO THAT IS TO DO WHAT
12:43PM 21 IS CALLED INTERNAL PT, BUT AGAIN, THAT WASN'T -- THAT IS NOT
12:43PM 22 EVEN THE SOP YOU SHOWED ME EARLIER. THIS IS ME NOT KNOWING
12:43PM 23 WHAT WAS IN THE SOP BUT ME TRYING TO OFFER A SOLUTION TO THE
12:43PM 24 FACT THAT WE HAD NOT DONE PT CORRECTLY ON THOSE TESTS.

12:43PM 25 Q. AND IN THE MESSAGE MR. BALWANI IS AGREEING WITH YOU THAT

12:43PM 1 IT'S A GOOD IDEA TO DO THIS INTERNAL PT TO FIND THE SOLUTION;
12:44PM 2 CORRECT?

12:44PM 3 A. YES.

12:44PM 4 Q. TURNING TO PAGE 2 OF THE EXHIBIT. AT THE TOP THERE'S A
12:44PM 5 MESSAGE FROM DANIEL YOUNG WHERE DR. YOUNG APPEARS "TO ADD MORE
12:44PM 6 DETAILS TO HIS CONCERNS RELATING TO USING PT SAMPLES WITHOUT
12:44PM 7 EXTENSIVE STUDY WITH OUR LDT'S AND WITHOUT A PEER GROUP."

12:44PM 8 DO YOU SEE THAT?

12:44PM 9 A. I CAN'T SEE THE HEADER TO THE EMAIL.

12:44PM 10 WHO WROTE THIS?

12:44PM 11 Q. IT'S ON THE SCREEN. DANIEL YOUNG?

12:44PM 12 A. DANIEL YOUNG. I SEE IT. NOW I DO.

12:44PM 13 Q. AND THIS IS DANIEL YOUNG OFFERING INSIDER'S THOUGHTS AND
12:44PM 14 HE WRITES, "TO ADD MORE DETAILS ABOUT MY CONCERNS RELATED TO
12:45PM 15 USING PT SAMPLES WITHOUT EXTENSIVE STUDY WITH OUR LDT'S AND
12:45PM 16 WITHOUT A PEER GROUP, I WANTED TO HIGHLIGHT WHY THE PEER GROUP
12:45PM 17 METHODS WERE ESTABLISHED FOR PT AND OTHER CHALLENGES RELATED TO
12:45PM 18 MATRIX EFFECTS."

12:45PM 19 DO YOU SEE THAT?

12:45PM 20 A. YES.

12:45PM 21 Q. AND SO, AGAIN, DR. YOUNG IS RAISING THIS ISSUE AND
12:45PM 22 QUESTION RELATING TO POTENTIAL MATRIX EFFECTS AND WHETHER OR
12:45PM 23 NOT THERE'S A PEER GROUP THAT WOULD MAKE COMMERCIAL PROFICIENCY
12:45PM 24 TESTING PROCEDURES WITH THE NEW YORK OR AAP OR CAP APPROPRIATE
12:45PM 25 OR SOME SORT OF AAP PROGRAM?

12:45PM 1 A. HE'S REFERRING TO THIS CONCEPTUALLY.

12:45PM 2 Q. OKAY. AND THEN CONTINUING ON AT PAGE 1 THERE IS A MESSAGE
12:45PM 3 FROM DR. ROSENDORFF AT THE MIDDLE OF THE PAGE TO MR. BALWANI,
12:45PM 4 DANIEL YOUNG, COPYING OTHERS, INCLUDING YOURSELF.

12:45PM 5 AND DR. ROSENDORFF WROTE, "READING THROUGH THE REGULATIONS
12:45PM 6 MORE FINELY -- IF WE DID ENROLL IN PT FOR THERANOS METHODS, WE
12:46PM 7 WOULD NEED TO DO AN ALTERNATIVE ASSESSMENT PROCEDURE IN ANY
12:46PM 8 EVENT, BECAUSE THE RESULTS WOULD BE UNGRADED (FEWER THAN 10
12:46PM 9 PARTICIPANTS). UNGRADED EVENTS HAVE TO UNDERGO AN AAP
12:46PM 10 ACCORDING TO CLIA REGS."

12:46PM 11 DO YOU SEE THAT?

12:46PM 12 A. YES, I SEE THAT.

12:46PM 13 Q. AND THE ISSUE OF "BECAUSE THE RESULTS WOULD BE UNGRADED"
12:46PM 14 AS DR. ROSENDORFF WROTE, RELATES TO THE FACT THAT TO THE EXTENT
12:46PM 15 THAT YOU SENT IN THE RESULTS FROM YOUR RUNNING THE PT SAMPLES,
12:46PM 16 THERE WAS NOT A SUFFICIENTLY LARGE PEER GROUP WITH WHICH TO
12:46PM 17 COMPARE THOSE RESULTS.

12:46PM 18 IS THAT WHAT DR. ROSENDORFF IS WRITING HERE?

12:46PM 19 A. I BELIEVE THAT'S WHAT HE'S SAYING THERE.

12:46PM 20 Q. OKAY. WHICH MEANS THAT THERE WAS NO PEER GROUP AGAINST
12:46PM 21 WHICH TO MEASURE THE RESULTS THAT YOU JUST PROVIDED TO THE
12:46PM 22 AGENCY; CORRECT?

12:46PM 23 A. THERE WOULDN'T HAVE BEEN OTHER LABS RUNNING EDISONS IS ALL
12:46PM 24 THAT MEANS.

12:46PM 25 Q. AND THEN CONTINUING ON AT THE TOP OF THE PAGE ON 1570 YOU

12:47PM 1 RESPOND TO DR. ROSENDORFF, COPYING MR. BALWANI, DR. YOUNG, AND
12:47PM 2 OTHERS.

12:47PM 3 DO YOU SEE THAT?

12:47PM 4 A. YEAH, I DO.

12:47PM 5 Q. AND YOU WROTE, "ADAM,

12:47PM 6 "SEEMS THAT THE THING TO DO WOULD BE TO REPORT THE
12:47PM 7 THERANOS METHODS, AS THEY ARE OUR PRIMARY METHODS. THIS WOULD
12:47PM 8 KEEP US IN FULL COMPLIANCE WITH THE REGS, AND THE LACK OF A
12:47PM 9 PEER GROUP WOULD TRIGGER AN 'UNGRADED' SCORE, WHICH WOULD ALLOW
12:47PM 10 US TO EVALUATE OUR PERFORMANCE."

12:47PM 11 DO YOU SEE THAT?

12:47PM 12 A. YES.

12:47PM 13 Q. AND THEN "FOR ANY TESTS THAT SEEM TO HAVE MATRIX EFFECTS,
12:47PM 14 THIS EVALUATION OF OUR PERFORMANCE COULD INCLUDE THE TESTING OF
12:47PM 15 5 PATIENT SPECIMENS INSTEAD OF PT SURVEY SAMPLES."

12:47PM 16 DO YOU SEE THAT?

12:47PM 17 A. OH, YEAH, I SEE THAT.

12:47PM 18 Q. OKAY. SO YOU WERE AGREEING WITH DR. ROSENDORFF THAT
12:47PM 19 RUNNING THE PT ON THE EDISON AND REPORTING THE RESULTS TO THE
12:47PM 20 AGENCY WOULD RESULT IN THIS UNGRADED BECAUSE OF THE LACK OF A
12:47PM 21 LARGE ENOUGH PEER GROUP; CORRECT?

12:47PM 22 A. IT WOULD -- PROBABLY, YEAH. I DON'T KNOW WHAT NEW YORK'S
12:48PM 23 PROCEDURE WOULD BE IN THAT CASE.

12:48PM 24 Q. OKAY. BUT THAT'S WHAT YOU WROTE HERE IN THE MESSAGE. YOU
12:48PM 25 AGREED WITH HIM THAT THE UNGRADED RESULTS WOULD STILL HAPPEN?

12:48PM 1 A. IT'S LIKELY.

12:48PM 2 Q. OKAY. AND THEN THE LAB WOULD THEN REVERT TO THIS INTERNAL

12:48PM 3 AAP PROCESS OF TESTING FIVE PATIENT SAMPLES INSTEAD OF THE PT

12:48PM 4 SAMPLES FROM THE AGENCY; CORRECT?

12:48PM 5 A. THIS WAS A SUGGESTION OF MINE THAT WE RUN SOME KIND OF

12:48PM 6 PATIENT SPECIMENS FOR WHICH WE HAD KNOWN VALUES, AND AT THIS

12:48PM 7 TIME I DIDN'T KNOW WHAT OUR SOP WAS. I'M JUST TRYING TO FIND A

12:48PM 8 WAY TO DO PT ON THESE FOR THESE TESTS. THAT'S ALL I'M DOING

12:48PM 9 HERE.

12:48PM 10 Q. UNDERSTOOD.

12:48PM 11 AND THEN BELOW THAT YOU WROTE, "WE WOULD HAVE TO MAINTAIN

12:48PM 12 THE DATA/EVIDENCE ON FILE THAT CERTAIN OF OUR TESTS ARE

12:48PM 13 AFFECTED BY THE PT MATRIX, AND THIS WOULD BE OUR SCIENTIFIC

12:49PM 14 RATIONALE FOR EVALUATING THE PERFORMANCE OF SUCH TESTS INSTEAD

12:49PM 15 OF ACTUAL SPECIMENS."

12:49PM 16 DO YOU SEE THAT?

12:49PM 17 A. I SEE THAT.

12:49PM 18 Q. SO THE RECORDS FROM THIS INTERNAL PROCESS WOULD HAVE TO BE

12:49PM 19 MAINTAINED TO PROVIDE JUSTIFICATION LATER ON IF NEEDED;

12:49PM 20 CORRECT?

12:49PM 21 A. RIGHT. WE WOULD HAVE TO BE ABLE TO JUSTIFY LATER ON THE

12:49PM 22 FACT THAT WE WERE DOING PT DIFFERENTLY THAN ANYONE ELSE.

12:49PM 23 Q. BUT THE RESULTS OF THIS INTERNAL STUDY WOULD NOT BE

12:49PM 24 REPORTED OUT THEMSELVES TO THE PT AGENCY; CORRECT?

12:49PM 25 A. RIGHT. UNLIKE NORMAL PT, THE GOVERNMENT WOULD NOT RECEIVE

12:49PM 1 THOSE RESULTS.

12:50PM 2 Q. IF WE CAN TAKE A LOOK AT 1589. 1589.

12:50PM 3 A. YES.

12:50PM 4 Q. I THINK IT'S ALSO IN EVIDENCE.

12:50PM 5 YOUR HONOR, MAY WE PUBLISH?

12:50PM 6 THE COURT: YES.

12:50PM 7 BY MR. CAZARES:

12:50PM 8 Q. DO YOU SEE 1589 IS ON THE SCREEN, DR. PANDORI?

12:50PM 9 A. YES.

12:50PM 10 Q. AND YOU ALSO HAVE IT.

12:50PM 11 IT'S AN EMAIL CHAIN, THE LATTER OF WHICH IS AT THE TOP

12:50PM 12 PAGE FROM DANIEL YOUNG TO YOURSELF, ALSO TO MR. BALWANI,

12:50PM 13 DR. ROSENDORFF, AN INDIVIDUAL NAMED PAUL PATEL, COPYING

12:50PM 14 MS. HOLMES.

12:50PM 15 DO YOU SEE THAT?

12:50PM 16 A. I SEE SEVERAL EMAILS.

12:50PM 17 Q. OKAY. AT THE TOP OF THE PAGE?

12:50PM 18 A. AT THE TOP OF THE PAGE IS AN EMAIL FROM JAMIE LIU TO

12:51PM 19 ERIKA CHEUNG.

12:51PM 20 Q. YES. AND IF YOU COULD TURN TO THE SECOND PAGE OF 1589.

12:51PM 21 A. OKAY.

12:51PM 22 Q. AND THE EMAIL CHAIN STARTS WITH A MESSAGE FROM YOURSELF TO

12:51PM 23 LANGLEY GEE, ERIKA CHEUNG, JAMIE LIU, AND THEN THERE'S A COPY TO

12:51PM 24 ADAM ROSENDORFF.

12:51PM 25 DO YOU SEE THAT?

12:51PM 1

A. YES.

12:51PM 2

Q. AND THE MESSAGE READS, "ALL,

12:51PM 3

"AS PER OUR EARLIER DISCUSSION:

12:51PM 4

"WE WILL BE APPLYING A NEW QUALITY MEASURE TO OUR EDISON

12:51PM 5

TESTS.

12:51PM 6

"GOING FORWARD ONCE PER WEEK WE WILL BE COLLECTING AND

12:51PM 7

COMPARING 5 SAMPLES AS FOLLOWS:"

12:51PM 8

AND THEN THERE'S A DESCRIPTION OF VENIPUNCTURE ON

12:51PM 9

PREDICATE; VENIPUNCTURE ON EDISON; FINGERSTICK ON EDISON.

12:52PM 10

DO YOU SEE THAT?

12:52PM 11

A. YES.

12:52PM 12

Q. AND THIS IS -- THIS INTERNAL PROCESS AND QUALITY STUDY

12:52PM 13

THAT WE HAVE ALREADY DISCUSSED THAT WAS BEING DONE, THIS WAS AN

12:52PM 14

INTERNAL QUALITY STUDY REGARDING THIS USE OF FIVE SAMPLES

12:52PM 15

INTERNALLY IN LIEU OF DOING PT TO FIGURE OUT THIS AAP ISSUE;

12:52PM 16

CORRECT?

12:52PM 17

A. CORRECT.

12:52PM 18

Q. IF YOU CAN TURN TO THE BOTTOM OF PAGE 1?

12:52PM 19

A. YES.

12:52PM 20

Q. DO YOU SEE THERE'S A MESSAGE FROM MR. BALWANI TO YOURSELF

12:52PM 21

COPYING LONGLY GEE, DR. YOUNG, DR. SIVARAMAN, DR. SAKSENA,

12:52PM 22

DR. ROSENDORFF, TINA LIN, AND SOME OF THE LAB ASSOCIATES.

12:52PM 23

DO YOU SEE THAT?

12:52PM 24

A. YES.

12:52PM 25

Q. AND YOU SEE THAT MR. BALWANI WAS MADE AWARE OF THIS

12:53PM 1 INTERNAL STUDY THAT WAS BEING PERFORMED AT YOUR REQUEST;

12:53PM 2 CORRECT?

12:53PM 3 A. YES.

12:53PM 4 Q. OKAY. AND MR. BALWANI WROTE, "PLEASE MAKE SURE THAT

12:53PM 5 EDTA-PLASMA (OR AN APPROPRIATE MATRIX) IS USED FOR EDISONS AND

12:53PM 6 THE APPROPRIATE ONES FOR PREDICATE METHODS."

12:53PM 7 DO YOU SEE THAT?

12:53PM 8 A. I DO.

12:53PM 9 Q. AND MR. BALWANI PROVIDES SUGGESTIONS ABOUT THE STUDY.

12:53PM 10 DO YOU SEE THAT?

12:53PM 11 A. YES, I DO.

12:53PM 12 Q. OKAY. HE'S AGREEING THAT THE STUDY SHOULD BE PERFORMED;

12:53PM 13 CORRECT?

12:53PM 14 A. HE'S AGREEING THAT THE STUDY SHOULD BE PERFORMED --

12:53PM 15 INITIATED.

12:53PM 16 Q. OKAY. AND IT WAS INITIATED; CORRECT?

12:53PM 17 A. IT'S BEEN EIGHT YEARS. I DON'T REMEMBER.

12:53PM 18 Q. PASSAGE OF TIME MAKES RECOLLECTION DIFFICULT?

12:54PM 19 A. SOMETIMES.

12:54PM 20 Q. FURTHER UP ON THE MESSAGE DR. ROSENDORFF RESPONDS TO

12:54PM 21 MR. BALWANI ON FEBRUARY 25TH, 2014.

12:54PM 22 "SUNNY,

12:54PM 23 "JUST TO CLARIFY, EDISONS ARE EDTA-PLASMA AND THE MAJORITY

12:54PM 24 OF IMMUNOASSAYS ON THE PREDICATE INSTRUMENTS ARE SERUM."

12:54PM 25 DO YOU SEE THAT?

12:54PM 1 A. YES.

12:54PM 2 Q. AND THEN HE ALSO WRITES, "WITH THIS STUDY, WE WILL COLLECT

12:54PM 3 EDTA-PLASMA CTN'S AND THE RIGHT VACUTAINER FOR THE PREDICATE

12:54PM 4 ASSAYS."

12:54PM 5 SO THIS IS, AGAIN, COMPARING THE EDISON TO THE PREDICATE

12:54PM 6 DEVICES; CORRECT?

12:54PM 7 A. YES. THIS IS ADAM, DR. ROSENDORFF, MAKING SURE THAT THE

12:54PM 8 CORRECT SPECIMENS ARE DRAWN FOR THE ASSAYS AT HAND.

12:54PM 9 Q. AND THEN MR. BALWANI RESPONDS TO DR. ROSENDORFF, "THIS IS

12:54PM 10 WHAT WE DID FOR ALL OF OUR VALIDATION WORK WE DID FOR EACH OF

12:54PM 11 THESE ASSAYS WHEN WE BROUGHT THEM FOR CLIA."

12:55PM 12 DO YOU SEE THAT?

12:55PM 13 A. YES.

12:55PM 14 Q. "I AM NOT SURE WHAT NEW INFORMATION WE WILL GET BUT IF YOU

12:55PM 15 WANT TO RERUN THIS ONCE TO GENERATE QC DATA, I HAVE NO ISSUES

12:55PM 16 WITH THE FOLLOWING AS COMMUNICATED YESTERDAY. THIS ONE TIME

12:55PM 17 STUDY WILL BE USEFUL TO CLARIFY ANY CONFUSION CAUSED BY THE PT

12:55PM 18 SAMPLES."

12:55PM 19 DO YOU SEE THAT?

12:55PM 20 A. YES.

12:55PM 21 Q. AND SO, AGAIN, MR. BALWANI WAS AGREEING THAT THE STUDY

12:55PM 22 COULD AND SHOULD BE PERFORMED; CORRECT?

12:55PM 23 A. ONCE, YES.

12:55PM 24 Q. DR. ROSENDORFF, IF YOU CAN TAKE A LOOK AT WHAT IS

12:55PM 25 WITHIN --

12:55PM 1 THE COURT: DR. PANDORI.

12:55PM 2 MR. CAZARES: I'M SORRY?

12:55PM 3 THE COURT: PANDORI.

12:56PM 4 BY MR. CAZARES:

12:56PM 5 Q. DR. PANDORI, IF YOU CAN TAKE A LOOK AT WHAT IS IN THE

12:56PM 6 BINDER 2 FOR THE DEFENSE EXHIBIT 20258.

12:56PM 7 A. WHICH NUMBER?

12:56PM 8 Q. 20258.

12:56PM 9 A. I'M THERE.

12:56PM 10 Q. OKAY. AND 20258 APPEARS TO BE AN EMAIL CHAIN, THE LATTER

12:56PM 11 OF WHICH AT THE TOP OF THE FIRST PAGE IS DATED FEBRUARY 25,

12:56PM 12 2014, A MESSAGE FROM MR. BALWANI TO YOURSELF.

12:56PM 13 DO YOU SEE THAT?

12:56PM 14 A. YES.

12:56PM 15 Q. AND AGAIN, WITHIN THE TIME PERIOD THAT YOU WORKED AT

12:56PM 16 THERANOS, EMAIL WAS USED REGULARLY TO COMMUNICATE WITHIN THE

12:56PM 17 CLIA LAB AND WITH OTHERS?

12:56PM 18 A. YES.

12:56PM 19 MR. CAZARES: MOVE TO ADMIT 20258, YOUR HONOR.

12:57PM 20 MR. BOSTIC: IS THIS COMING IN AS A BUSINESS RECORD,

12:57PM 21 YOUR HONOR?

12:57PM 22 THE COURT: I BELIEVE IT IS.

12:57PM 23 IS THAT THE FOUNDATION?

12:57PM 24 MR. CAZARES: YES, YOUR HONOR.

12:57PM 25 MR. BOSTIC: NO OBJECTION.

12:57PM 1 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:57PM 2 (DEFENDANT'S EXHIBIT 20258 WAS RECEIVED IN EVIDENCE.)

12:57PM 3 BY MR. CAZARES:

12:57PM 4 Q. STARTING AT THE LAST PAGE OF THE EXHIBIT, PAGE 3 JUST TO
12:57PM 5 ORIENT US, DO YOU SEE THERE'S A MESSAGE FROM DR. ROSENDORFF TO
12:57PM 6 CLIA.LAB.

12:57PM 7 DO YOU SEE THAT?

12:57PM 8 A. YEAH. YES.

12:57PM 9 Q. AND DR. ROSENDORFF WRITES, "WHEN WE GET A VENOUS TUBE ONLY
12:57PM 10 FROM WAG THAT REQUIRES A VENOUS ONLY TEST AND ALSO REQUIRES A
12:57PM 11 TEST FOR VITAMIN D, TSH, PSA, OR FT4, IN ADDITION TO RUNNING AN
12:57PM 12 EDISON TEST FOR THE LATTER 4 ASSAYS, WE SHOULD ALSO RUN TESTING
12:58PM 13 ON THE PREDICATE INSTRUMENTS PARALLEL AS FOLLOWS," AND HE LISTS
12:58PM 14 VITAMIN B, DIASORIN; TSH, IMMULITE; FT4, IMMULITE; TPSA,
12:58PM 15 IMMULITE.

12:58PM 16 AND THEN, "PLEASE GIVE BOTH THE EDISON RESULT AND THE
12:58PM 17 PREDICATE RESULT TO LANGLEY TO BE INCLUDED IN THE SPREADSHEET."

12:58PM 18 DO YOU SEE THAT?

12:58PM 19 A. I SEE THAT.

12:58PM 20 Q. AND THIS IS COMPARING THE EDISON TO THE PREDICATE DEVICES?

12:58PM 21 A. YES.

12:58PM 22 Q. FURTHER UP IN THE CHAIN ON PAGE 1 THERE'S A MESSAGE FROM
12:58PM 23 YOURSELF TO MR. BALWANI ON FEBRUARY 25, 2014.

12:58PM 24 DO YOU SEE THAT?

12:58PM 25 A. YES.

12:58PM 1 Q. AND IN THE MESSAGE YOU SAY "THANK YOU FOR THIS."

12:58PM 2 "TO CLARIFY, SHALL I HOLD OFF ON INITIATING THE QC MEASURE

12:59PM 3 WE DISCUSSED IN YOUR OFFICE YESTERDAY?

12:59PM 4 "I'VE ALREADY ORGANIZED ALL THE CTN AND DRAWING

12:59PM 5 REQUIREMENTS WITH IN-HOUSE STUDIES AND BCD.

12:59PM 6 "AND I'VE DISCUSSED EXECUTION WITH A SMALL INTRA-CLIA

12:59PM 7 TEAM, INCLUDING LONGLY WHOM I'VE PUT IN CHARGE.

12:59PM 8 "THE PROPER SPECIMEN TYPES PER METHOD WERE GOING TO BE

12:59PM 9 USED AND RESULTS COMPARED."

12:59PM 10 DO YOU SEE THAT?

12:59PM 11 A. YES.

12:59PM 12 Q. AND AGAIN, THIS IS AN INTERNAL STUDY COMPARING EDISON TO

12:59PM 13 PREDICATE?

12:59PM 14 A. YES.

12:59PM 15 Q. BUT YOU WERE ASKING MR. BALWANI WHETHER YOU SHOULD HOLD

12:59PM 16 OFF ON INITIATING THE QC MEASURE.

12:59PM 17 DO YOU SEE THAT?

12:59PM 18 A. YES.

12:59PM 19 Q. AND DOCTOR -- MR. BALWANI AT THE TOP OF THE PAGE RESPONDS,

12:59PM 20 "I WOULD LIKE TO DO THIS FOR THESE 4 ASSAYS THIS WEEK AND

12:59PM 21 ADDITIONAL ASSAYS AT LEAST ONCE SO WE HAVE THE DATA AND WE CAN

12:59PM 22 ELIMINATE THE DOUBT THAT THE PT SAMPLES HAVE CREATED IN SOME

12:59PM 23 PEOPLE'S MINDS."

12:59PM 24 DO YOU SEE THAT?

12:59PM 25 A. YES.

12:59PM 1 Q. AND SO, AGAIN, MR. BALWANI AGREED THAT THIS STUDY SHOULD
12:59PM 2 PROCEED?

12:59PM 3 A. IS THIS REFERRING -- I'M NOT SURE WHAT STUDY HE'S
01:00PM 4 REFERRING TO EXACTLY.

01:00PM 5 Q. MR. BALWANI'S MESSAGE AT THE TOP OF EXHIBIT 20258.
01:00PM 6 DO YOU SEE THAT?

01:00PM 7 A. YES.

01:00PM 8 Q. AND IT'S A RESPONSE TO YOUR MESSAGE RIGHT BELOW; CORRECT?
01:00PM 9 A. YES.

01:00PM 10 Q. AND YOUR MESSAGE SAYS, "TO CLARIFY, SHALL I HOLD OFF ON
01:00PM 11 INITIATING THE QC MEASURE?"
01:00PM 12 DO YOU SEE THAT?

01:00PM 13 A. YES.

01:00PM 14 Q. AND IN RESPONSE MR. BALWANI SAYS, "I WOULD LIKE TO DO THIS
01:00PM 15 FOR THESE 4 ASSAYS THIS WEEK."
01:00PM 16 DO YOU SEE THAT?

01:00PM 17 A. I SEE THAT, YES.

01:00PM 18 Q. AND SO MR. BALWANI WAS AGREEING TO PROCEED WITH THE QC
01:00PM 19 MEASURE; CORRECT?

01:00PM 20 A. YES.

01:00PM 21 Q. AND MR. BALWANI CONTINUES WITHIN THAT SAME FIRST SENTENCE
01:00PM 22 AFTER THIS WEEK, "AND ADDITIONAL ASSAYS AT LEAST ONCE SO WE
01:01PM 23 HAVE THE DATA AND WE CAN ELIMINATE THE DOUBT THAT THE PT
01:01PM 24 SAMPLES HAVE CREATED IN ME PEOPLE'S MINDS."
01:01PM 25 DO YOU SEE THAT?

01:01PM 1 A. YES.

01:01PM 2 Q. AND THIS ISSUE REGARDING THE PT EXPERIMENT USING THE

01:01PM 3 NEW YORK SAMPLES WITHIN THE CLINICAL LAB ON THE EDISON RAISED

01:01PM 4 QUESTIONS WITHIN THE LABORATORY AMONGST STAFF; CORRECT?

01:01PM 5 A. CORRECT.

01:01PM 6 Q. ALSO QUESTIONS BEING RAISED BY PERSONS OUTSIDE OF THE

01:01PM 7 CLINICAL LAB, YOU'RE AWARE OF THAT?

01:01PM 8 A. OUTSIDE OF THE CLINICAL LAB? YOU MEAN EMPLOYEES AT

01:01PM 9 THERANOS OUTSIDE?

01:01PM 10 Q. YES.

01:01PM 11 A. YES.

01:01PM 12 Q. AND YOU SEE MR. BALWANI WANTS YOU TO PROCEED WITH THIS

01:01PM 13 QUALITY MEASURE AS YOU'VE DESCRIBED TO IN ORDER TO TRY TO PUT

01:01PM 14 TO REST THOSE QUESTIONS AND CONCERNS; CORRECT?

01:01PM 15 MR. BOSTIC: OBJECTION. CALLS FOR SPECULATION AND

01:02PM 16 FOUNDATION.

01:02PM 17 THE COURT: SUSTAINED ON SPECULATION.

01:02PM 18 BY MR. CAZARES:

01:02PM 19 Q. I'LL CONTINUE. GOING BACK TO THE MESSAGE.

01:02PM 20 MR. BALWANI WROTE, "BUT I WOULD LIKE THIS PERFECTLY

01:02PM 21 PLANNED. YOU SHOULD INCLUDE SURAJ AND DANIEL AND SAM SO THEY

01:02PM 22 MAKE SURE WE HAVE THE RIGHT CARTRIDGES, RIGHT PROCESSES AND

01:02PM 23 RIGHT DATA (BASICALLY DO IT IN THE NORMANDY LAB AS THERE

01:02PM 24 EVERYTHING DOES RUN CORRECTLY) SO WE DO THIS RIGHT."

01:02PM 25 DO YOU SEE THAT?

01:02PM 1 A. I DO.

01:02PM 2 Q. AND DANIEL IS DANIEL YOUNG?

01:02PM 3 A. YES.

01:02PM 4 Q. AND SURAJ IS DR. SAKSENA?

01:02PM 5 A. I THINK SO.

01:02PM 6 Q. OKAY. AND SAM IS -- I BELIEVE HE'S A DOCTOR. I'M NOT

01:02PM 7 SURE. MR. SAM ANEKAL? DO YOU KNOW WHO SAM ANEKAL IS?

01:02PM 8 A. I RECOGNIZE -- WHEN YOU SAY THE NAME, IT RESONATES WITH

01:02PM 9 ME.

01:02PM 10 Q. WITHIN THAT SAME BINDER, DR. PANDORI, IF YOU COULD TAKE A

01:03PM 11 LOOK AT EXHIBIT 20282.

01:03PM 12 A. YES.

01:03PM 13 Q. AND THE FIRST PAGE AT THE TOP REFERENCES A MESSAGE FROM

01:03PM 14 YOURSELF TO MR. BALWANI ON FEBRUARY 27, 2014.

01:03PM 15 DO YOU SEE THAT?

01:03PM 16 A. YES.

01:03PM 17 Q. OKAY.

01:03PM 18 MOVE TO ADMIT EXHIBIT 20282, YOUR HONOR.

01:03PM 19 MR. BOSTIC: NO OBJECTION.

01:03PM 20 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:03PM 21 (DEFENDANT'S EXHIBIT 20282 WAS RECEIVED IN EVIDENCE.)

01:03PM 22 BY MR. CAZARES:

01:03PM 23 Q. AND IF YOU CAN TURN TO THE TOP OF THE SECOND PAGE,

01:04PM 24 DR. PANDORI.

01:04PM 25 A. YES.

01:04PM 1 Q. AND THERE'S A MESSAGE FROM MR. BALWANI TO DR. ROSENDORFF,
01:04PM 2 YOURSELF, LI DING-CHIANG, HODA ALAMDAR, DANIEL YOUNG, AND
01:04PM 3 BRAD ARINGTON.

01:04PM 4 DO YOU SEE THAT?

01:04PM 5 A. YES.

01:04PM 6 Q. AND THE MESSAGE READS:

01:04PM 7 "ADAM/MARK,

01:04PM 8 "ELIZABETH MET WITH CHARLES ROUSSEL, CEO OF CAP, HERE IN
01:04PM 9 OUR OFFICE TODAY ON OUR BROADER COLLABORATION EFFORTS WITH THEM
01:04PM 10 OVER THE NEXT FEW YEARS. AS SHARED IN THE PAST, WE HAVE
01:04PM 11 EXCELLENT RELATIONSHIP WITH HIM.

01:04PM 12 "HE ALSO CONFIRMED OUR POSITION ON AAP AND PT AS DISCUSSED
01:04PM 13 YESTERDAY AND AS WE HAVE ALWAYS KNOWN. WE ARE GOING TO BE
01:04PM 14 WORKING WITH CAP CLOSELY OVER COMING MONTHS TO DO SOME
01:04PM 15 BENEFICIAL THINGS WHICH WILL BE GOOD FOR LAB BUSINESSES
01:04PM 16 EVERYWHERE AND CERTAINLY FOR US."

01:04PM 17 DO YOU SEE THAT?

01:04PM 18 A. YES.

01:04PM 19 Q. AND CAP IS ONE OF THE PROFICIENCY TESTING AGENCIES AMONG
01:04PM 20 OTHERS; CORRECT?

01:04PM 21 A. THEY HAPPEN TO OFFER PROFICIENCY TESTING SERVICES. THEY
01:04PM 22 ARE THEMSELVES AN ACCREDITING BODY AS WELL.

01:05PM 23 Q. AND CHARLES ROUSSEL, HE'S AN EXECUTIVE AT CAP, OR WAS AT
01:05PM 24 THE TIME?

01:05PM 25 A. I DON'T RECOGNIZE THE NAME.

01:05PM 1 Q. AND CONTINUE WITH THE MESSAGE IF YOU CAN CONTINUE ON
01:05PM 2 PAGE 1, AT THE BOTTOM OF PAGE 1.
01:05PM 3 A. YES.
01:05PM 4 Q. YOU WROTE A MESSAGE TO MR. BALWANI ON FEBRUARY 26TH,
01:05PM 5 "SUNNY,
01:05PM 6 "ARE WE THINKING OF BECOMING ACCREDITED BY CAP,
01:05PM 7 EVENTUALLY?"
01:05PM 8 A. I SEE THAT.
01:05PM 9 Q. OKAY. AND WAS THAT ATTRACTIVE TO YOU, POTENTIALLY
01:05PM 10 BECOMING ACCREDITED BY CAP AT THERANOS?
01:05PM 11 A. THAT'S A GOOD IDEA, I THINK.
01:05PM 12 Q. AND MR. BALWANI RESPONDED, "AT SOME POINT WE ARE THINKING
01:05PM 13 ABOUT THIS. WE HAVE HAD CONCERNS THAT THE AUDITORS MAY BE FROM
01:05PM 14 COMPETITIVE LABS AND PETER HAS OFFERED TO MAKE SURE THAT THAT
01:05PM 15 DOESN'T HAPPEN AND HE PERSONALLY COULD LEAD THE INSPECTION
01:05PM 16 WHICH WILL BE KINDA COOL."
01:05PM 17 DO YOU SEE THAT?
01:05PM 18 A. YES.
01:05PM 19 Q. NOW, MR. BALWANI IS REFERENCING A CONCERN THAT I GUESS THE
01:05PM 20 CAP AUDITORS AS A PART OF THE ACCREDITATION MIGHT BE EMPLOYEES
01:05PM 21 OF OTHER LABORATORIES.
01:06PM 22 IS THAT WHAT HE'S SAYING?
01:06PM 23 A. I THINK SO, YES.
01:06PM 24 Q. OKAY. AND A CONCERN THAT THOSE OTHER LABORATORIES MAY
01:06PM 25 LEARN INTERNAL TRADE SECRETS, METHODS USED BY THERANOS;

01:06PM 1 CORRECT?

01:06PM 2 A. YES.

01:06PM 3 Q. AND YOU RESPONDED AT THE TOP OF THE PAGE, "OKAY. YOU READ

01:06PM 4 MY MIND. I WAS GOING TO MENTION HOW THEY DO THEIR INSPECTIONS

01:06PM 5 AND HOW THE TEAM THAT COMES IN CAN BE FROM VARIOUS PLACES --

01:06PM 6 OTHER CORPORATE ENTITIES AS WELL."

01:06PM 7 DO YOU SEE THAT?

01:06PM 8 A. YES.

01:06PM 9 Q. AND YOU SAY, "SOUNDS VERY GOOD."

01:06PM 10 SO YOU RECOGNIZE AT THE TIME THAT, I GUESS, THIS ISSUE

01:06PM 11 RAISED BY MR. BALWANI ABOUT POTENTIAL EMPLOYEES FROM COMPETITOR

01:06PM 12 LABS BEING APART OF THE INSPECTION WERE AT THERANOS TO, I

01:06PM 13 GUESS, PARTICIPATE IN A CAP AND ACCREDITATION PROGRAM; CORRECT?

01:06PM 14 A. I RECOGNIZE THAT IT WAS A POSSIBILITY THAT THAT MIGHT

01:06PM 15 HAPPEN BUT DIDN'T KNOW AT THAT MOMENT WHAT SOLUTIONS MAY EXIST

01:07PM 16 IN THAT.

01:07PM 17 Q. OKAY. FAIR ENOUGH. THANK YOU.

01:07PM 18 IF YOU CAN TAKE A LOOK AT EXHIBIT 3526 IN VOLUME 1. 3526.

01:07PM 19 A. OKAY.

01:07PM 20 Q. DO YOU HAVE 3526?

01:07PM 21 A. I SEE IT.

01:07PM 22 Q. OKAY. 3526 IS AN EMAIL DATED MARCH 14TH, 2014. IT

01:08PM 23 APPEARS TO BE FROM YOURSELF -- I MEAN, FROM MR. BALWANI TO YOU

01:08PM 24 COPYING SOME OTHERS RELATING TO VITAMIN D.

01:08PM 25 DO YOU SEE THAT?

01:08PM 1

A. YES.

01:08PM 2

Q. AND AGAIN, EMAIL WAS USED AS A REGULAR MEANS OF

01:08PM 3

COMMUNICATION WITHIN THE CLINICAL LAB AS WELL AS WITH

01:08PM 4

MANAGEMENT; CORRECT?

01:08PM 5

A. YES.

01:08PM 6

MR. CAZARES: MOVE TO ADMIT 3526, YOUR HONOR.

01:08PM 7

MR. BOSTIC: TWO LAYERS OF HEARSAY, YOUR HONOR.

01:08PM 8

THE COURT: CAN YOU LAY A FURTHER FOUNDATION IF YOU

01:08PM 9

CAN, COUNSEL.

01:08PM 10

MR. CAZARES: YES, YOUR HONOR.

01:08PM 11

Q. WITHIN THE EMAIL CHAIN REFLECTED HERE, WE JUST TALKED

01:08PM 12

ABOUT IN THE LAST COUPLE OF MESSAGES IN THE LAST FEW MINUTES

01:08PM 13

THIS INTERNAL QUALITY MEASURE STUDY THAT WAS BEING PERFORMED ON

01:08PM 14

THE FOUR THERANOS ASSAYS COMPARING THE PREDICATE METHODS WITH

01:08PM 15

THE THERANOS METHODS; CORRECT?

01:08PM 16

A. CORRECT.

01:08PM 17

Q. AND THAT STUDY WAS DONE; CORRECT?

01:09PM 18

A. TO MY KNOWLEDGE.

01:09PM 19

Q. OKAY. AND MR. BALWANI WAS MADE AWARE OF THAT STUDY,

01:09PM 20

CORRECT, AS WE'VE SEEN?

01:09PM 21

A. YES.

01:09PM 22

Q. YOURSELF ALSO AWARE OF IT AT THE TIME?

01:09PM 23

A. YES.

01:09PM 24

Q. AND DR. ROSENDORFF?

01:09PM 25

A. YES.

01:09PM 1 Q. OKAY. YOU MENTIONED BEFORE THAT DR. SURAJ SAKSENA YOU
01:09PM 2 RECOGNIZED AS ONE OF THE SCIENTISTS WITHIN THE R&D LAB?
01:09PM 3 A. YES.
01:09PM 4 Q. AND DR. ANEKAL'S NAME YOU RECOGNIZED?
01:09PM 5 A. I DO.
01:09PM 6 Q. ALSO A SCIENTIST WITHIN THERANOS?
01:09PM 7 A. SEEING IT SPELLED OUT, I ALSO RECOGNIZE IT NOW.
01:09PM 8 Q. AND THESE ARE ALL PERSONS WHO PERIODICALLY WOULD BE
01:09PM 9 CONSULTED ABOUT ISSUES RELATED TO THE THERANOS DEVICE, TO THE
01:09PM 10 EXTENT QUESTIONS CAME UP ABOUT PERFORMANCE, ABOUT CARTRIDGES,
01:09PM 11 REAGENTS, THE CLINICAL SIDE WOULD PERIODICALLY CONSULT WITH THE
01:09PM 12 R&D SIDE AT TIMES; CORRECT?
01:10PM 13 A. YES.
01:10PM 14 Q. AND WITHIN THE MESSAGE MR. BALWANI SEEMS TO BE REPORTING
01:10PM 15 COMMUNICATIONS FROM THE R&D SIDE RELAYING IT TO THE CLINICAL
01:10PM 16 SIDE AS PART OF THESE DISCUSSIONS ABOUT THE QUALITY CONTROL
01:10PM 17 STUDY THAT YOU REQUESTED WITHIN THE CLINICAL LAB; CORRECT?
01:10PM 18 A. CAN YOU RESTATE YOUR QUESTION, PLEASE.
01:10PM 19 Q. MR. BALWANI IS REPORTING A COMMUNICATION REPORT FROM THE
01:10PM 20 R&D SIDE OF THERANOS TO YOURSELF, DR. ROSENDORFF, LANGLEY GEE,
01:10PM 21 ALL WITHIN THE CLINICAL LAB COMMUNICATING RESULTS FROM THIS
01:10PM 22 INTERNAL STUDY REGARDING THE EDISON; CORRECT?
01:10PM 23 A. THAT'S IMPLIED HERE, YES.
01:10PM 24 MR. CAZARES: MOVE TO ADMIT, YOUR HONOR.
01:10PM 25 MR. BOSTIC: SAME OBJECTION, YOUR HONOR. I DON'T

01:10PM 1 THINK THIS QUALIFIES UNDER 803(6). EVEN IF IT DID, IT WOULDN'T
01:10PM 2 ADDRESS THE EMBEDDED VERBAL OUT-OF-COURT STATEMENT.

01:11PM 3 THE COURT: WELL, I DON'T THINK THERE'S A SUFFICIENT
01:11PM 4 803(6) FOUNDATION. I THINK THERE'S SOME DOUBLE HEARSAY ON
01:11PM 5 THAT, SO I'LL SUSTAIN THE OBJECTION AT THIS POINT.

01:11PM 6 MR. CAZARES: YES, YOUR HONOR.

01:11PM 7 Q. DR. PANDORI, AGAIN, GETTING BACK TO THE ISSUE OF THE
01:11PM 8 NEW YORK PROFICIENCY TESTING EXPERIMENT, WHEN THAT HAPPENED,
01:11PM 9 AGAIN, ONE OF THE CONCERNS THAT YOU HAD WAS THAT THERANOS'S
01:11PM 10 CLINICAL LAB WASN'T REPORTING, WAS NOT TESTING AND REPORTING TO
01:11PM 11 THE NEW YORK AGENCY THE RESULTS OF PROFICIENCY TESTING SAMPLES
01:11PM 12 SUBMITTED BY NEW YORK TO THERANOS; CORRECT?

01:11PM 13 A. CORRECT.

01:11PM 14 Q. AND THAT WAS A CONCERN OF YOURS BECAUSE YOU BELIEVED THAT
01:11PM 15 THE LAB SHOULD BE REPORTING THE METHOD USED WITHIN THE LAB ON
01:11PM 16 PATIENT SAMPLES; CORRECT?

01:11PM 17 A. METHOD OR METHODS, YES.

01:12PM 18 Q. SO IF THERE WERE TWO METHODS, IN YOUR VIEW THE LAB SHOULD
01:12PM 19 REPORT BOTH?

01:12PM 20 A. IF THEY'RE USED FOR PATIENT MANAGEMENT.

01:12PM 21 Q. IT SHOULD BE REPORTED?

01:12PM 22 A. YES.

01:12PM 23 Q. WITHIN VALUE 1 OF THE DEFENSE BINDER YOU CAN TAKE A LOOK
01:12PM 24 AT EXHIBIT 1513.

01:12PM 25 A. YES.

01:12PM 1 Q. DO YOU HAVE 1513? YOU GOT THERE FASTER THAN I DID.

01:12PM 2 OKAY. 1513. AT THE TOP OF THE FIRST PAGE THERE APPEARS

01:12PM 3 TO BE A MESSAGE FROM ADAM ROSENDORFF TO A DAVID RAMOS, COPYING

01:12PM 4 A MR. GONG, AND COPYING YOURSELF.

01:13PM 5 DO YOU SEE THAT?

01:13PM 6 A. YES.

01:13PM 7 Q. AND I'M NOT SURE I SAID THE DATE. FEBRUARY 5, 2014; IS

01:13PM 8 THAT THE DATE?

01:13PM 9 A. YES.

01:13PM 10 MR. CAZARES: OKAY. MOVE TO ADMIT 1513, YOUR HONOR.

01:13PM 11 MR. BOSTIC: IS THIS COMING IN AS A BUSINESS RECORD?

01:13PM 12 MR. CAZARES: YES.

01:13PM 13 MR. BOSTIC: NO OBJECTION.

01:13PM 14 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

01:13PM 15 (DEFENDANT'S EXHIBIT 1513 WAS RECEIVED IN EVIDENCE.)

01:13PM 16 BY MR. CAZARES:

01:13PM 17 Q. AND STARTING AT THE BACK -- PAGE 2. THERE'S A MESSAGE ON

01:13PM 18 PAGE 2 FROM DAVID RAMOS TO SAM GONG.

01:13PM 19 DO YOU SEE THAT ON JANUARY 27TH?

01:13PM 20 A. I DO.

01:13PM 21 Q. AND MR. RAMOS SAYS, "HEY SAM,

01:13PM 22 "I WAS WONDERING IF YOU WERE GOING TO EMAIL ME THE

01:13PM 23 INFORMATION THAT I NEEDED IN REFERENCE TO THE THAN ANALYTES

01:13PM 24 THAT I CANNOT RUN ON ADVIA 1. COULD YOU PLEASE ALSO EMAIL ME

01:13PM 25 THE REASONING BEHIND MY INABILITY TO RUN THOSE ANALYTES? I

01:13PM 1 KNOW YOU EXPLAINED IT TO ME BEFORE BUT IT WOULD BE HANDY TO
01:13PM 2 HAVE A WRITTEN COPY OF THAT INFORMATION."
01:14PM 3 DO YOU SEE THAT?
01:14PM 4 A. YES.
01:14PM 5 Q. AND ADVIA 1 IS A SIEMENS DEVICE USED AT THERANOS; RIGHT?
01:14PM 6 A. IT'S A PREDICATE FDA APPROVED TESTING DEVICE.
01:14PM 7 Q. AND IT WAS ALSO A PREDICATE DEVICE THAT WAS MODIFIED BY
01:14PM 8 THERANOS TO RUN FINGERSTICK SAMPLES; CORRECT?
01:14PM 9 A. IT WAS A SIEMENS DEVICE. YOU SAID ADVIA WAS A SIEMENS
01:14PM 10 DEVICE?
01:14PM 11 Q. I'M ASKING YOU.
01:14PM 12 A. YEAH. I DON'T RECALL THAT PARTICULAR NAME RIGHT NOW. IT
01:14PM 13 MAY HAVE BEEN ONE OF THEM THAT WAS HACKED, YEAH.
01:14PM 14 Q. AND SO IS IT YOUR TESTIMONY THAT YOU DON'T RECALL WHETHER
01:14PM 15 A SIEMENS DEVICE WAS MODIFIED BY THERANOS TO RUN FINGERSTICK
01:14PM 16 SAMPLES?
01:14PM 17 A. A SIEMENS DEVICE WAS MODIFIED.
01:14PM 18 Q. OKAY. AND YOU RECOGNIZE ADVIA AS BEING A SIEMENS DEVICE
01:14PM 19 ALSO?
01:14PM 20 A. YES.
01:14PM 21 Q. OKAY. AND THEN TURNING TO THE FIRST PAGE OF 1513. MID
01:15PM 22 PAGE THERE'S A MESSAGE FROM AGAIN MR. GONG BACK TO DAVID RAMOS.
01:15PM 23 DO YOU RECALL WHO DAVID RAMOS IS, BY THE WAY?
01:15PM 24 A. DAVID RAMOS IS A CLINICAL LABORATORY SCIENTIST, WHICH IS A
01:15PM 25 LICENSED POSITION THAT ALLOWS HIM TO PERFORM DIAGNOSTIC TESTING

01:15PM 1 AND REPORT THOSE RESULTS TO CLINICIANS.

01:15PM 2 Q. SO HE'S THE LAYER OF PERSONNEL WITHIN THE CLINICAL LAB

01:15PM 3 ABOVE THE ASSISTANTS LIKE MS. CHEUNG; CORRECT?

01:15PM 4 A. CORRECT.

01:15PM 5 Q. AND SAM GONG, WAS HE A CLINICAL LAB EMPLOYEE? DO YOU

01:15PM 6 RECALL?

01:15PM 7 A. I DON'T RECALL HIM.

01:15PM 8 Q. MR. GONG WROTE TO MR. RAMOS OR RESPONDED TO MR. RAMOS,

01:15PM 9 "HERE IS THE LIST OF ASSAYS ON ADVIA 1 THAT HAVE BEEN ALTERED

01:15PM 10 FROM THE PREDICATE PROTOCOL."

01:15PM 11 THEN THERE'S A LIST OF ASSAYS. I WON'T ASK YOU TO NAME

01:15PM 12 ALL OF THEM, BUT THEY START WITH AAT.

01:15PM 13 WHAT IS AAT?

01:15PM 14 A. THAT'S SOME KIND OF ALBUMIN TRANSFERASE OR -- I'M NOT SURE

01:15PM 15 WHAT THE ENZYME NAME IS. IT'S A TRANSFERASE OF SOME KIND.

01:16PM 16 Q. OKAY. FURTHER DOWN THERE'S CARB 2. WOULD THAT BE

01:16PM 17 BICARBONATE?

01:16PM 18 A. YEAH. AND THESE PARTICULAR INITIALS, I DON'T KNOW WHAT

01:16PM 19 CARB 2 IS REFERRING TO. IT'S ANOTHER ANALYTE BIOCHEMICALLY.

01:16PM 20 Q. AND ARE THESE GENERAL CHEMISTRY ASSAYS?

01:16PM 21 A. YES.

01:16PM 22 Q. AND AGAIN, EVERYONE HAS THEIR SPECIALTY. GENERAL

01:16PM 23 CHEMISTRY WASN'T YOUR SPECIFICALLY?

01:16PM 24 A. RIGHT. IGA, IGM, AND IGG ARE ANTIBODIES.

01:16PM 25 Q. AND THEN IN RESPONSE TO MR. GONG, DAVID RAMOS FORWARDS THE

01:16PM 1 MESSAGE WITH THE LIST TO ADAM ROSENDORFF, AND THEN YOU SEE AT
01:16PM 2 THE TOP DR. ROSENDORFF WRITES TO MR. RAMOS COPYING SAM GONG AND
01:16PM 3 YOURSELF.

01:16PM 4 HE WROTE, "ALL,
01:16PM 5 "WE NEED ALL THESE METHODS CHANGED TO THE PREDICATE,
01:17PM 6 SIEMENS SETTING ASAP FOR THE PROFICIENCY EXERCISE DUE 2/6.
01:17PM 7 CURRENTLY ONLY IGA, IGM, AND IGG, TRF, AND HSCRIP ARE RUN ON
01:17PM 8 THERANOS METHODS -- FOR PT THESE SHOULD BE TESTED ON BOTH
01:17PM 9 THERANOS AND PREDICATE METHODS. WE WILL REPORT THE PREDICATE
01:17PM 10 NUMBERS FOR ALL ASSAYS."

01:17PM 11 DO YOU SEE THAT?

01:17PM 12 A. YES.

01:17PM 13 Q. OKAY. AND IN THIS MESSAGE DR. ROSENDORFF IS INSTRUCTING
01:17PM 14 MR. RAMOS WITHIN THE CLINICAL LAB TO CHANGE THE METHODS ON THE
01:17PM 15 SIEMENS DEVICE TO THE PREDICATE METHOD; CORRECT?

01:17PM 16 A. TO RUN THEM ON PREDICATE, YES.

01:17PM 17 Q. OKAY. AND FOR THE PT CHALLENGE ON FEBRUARY 6TH REFLECTIVE
01:17PM 18 MESSAGE, DR. ROSENDORFF IS ADVISING MR. RAMOS AND COPYING YOU
01:18PM 19 THAT THERANOS WILL REPORT THE PREDICATE RESULT AND NOT THE
01:18PM 20 EDISON RESULT; CORRECT?

01:18PM 21 A. IT JUST SAYS, "WE WILL REPORT PREDICATE NUMBERS," IT
01:18PM 22 DOESN'T SAY NOT TO REPORT THE OTHER.

01:18PM 23 Q. BUT DR. ROSENDORFF SAYS, "WE WILL REPORT THE PREDICATE
01:18PM 24 NUMBERS FOR ALL ASSAYS"; CORRECT?

01:18PM 25 A. IT SAYS THAT.

01:18PM 1 Q. OKAY. AND YOU WERE COPIED ON THE MESSAGE?

01:18PM 2 A. I'M COPIED ON THAT MESSAGE.

01:18PM 3 Q. OKAY. IF YOU CAN TAKE AT VOLUME 1, I'M PRETTY SURE I HAVE

01:18PM 4 THE RIGHT VOLUME, 5545. 5545.

01:18PM 5 A. I'M THERE.

01:18PM 6 Q. YOU'VE GOT IT?

01:19PM 7 55, AT THE TOP OF THE FIRST PAGE THERE'S A MESSAGE FROM

01:19PM 8 DAN EDLIN TO MS. HOLMES DATED 5-9-2014.

01:19PM 9 DO YOU SEE THAT?

01:19PM 10 A. YES.

01:19PM 11 Q. AND THEN FURTHER DOWN AT THE BOTTOM OF THE FIRST PAGE

01:19PM 12 AFTER THE FIRST TWO MESSAGES AT THE TOP THERE'S A STRING THAT

01:19PM 13 BEGINS WITH A MESSAGE FROM MR. GEE TO MR. EDLIN, BRAD ARINGTON,

01:19PM 14 DR. ROSENDORFF, AND YOURSELF.

01:19PM 15 DO YOU SEE THAT?

01:19PM 16 A. YES.

01:19PM 17 Q. ON MAY 8TH, 2014?

01:19PM 18 AND WITHIN THE LAB AT THERANOS, EMAIL COMMUNICATIONS WERE

01:19PM 19 A REGULAR MEANS OF COMMUNICATING ISSUES WITHIN THE LAB?

01:19PM 20 A. THEY WERE.

01:19PM 21 Q. AND WITH MANAGEMENT?

01:19PM 22 A. YES.

01:20PM 23 MR. CAZARES: MOVE TO ADMIT EXHIBIT 5545,

01:20PM 24 YOUR HONOR.

01:20PM 25 MR. BOSTIC: HEARSAY AND RELEVANCE, YOUR HONOR.

01:20PM 1 MR. CAZARES: AS TO HEARSAY, YOUR HONOR, I WOULD BE
01:20PM 2 OPEN TO, OF COURSE, REDACTING THE TOP TWO MESSAGES ON THE FIRST
01:20PM 3 PAGE THAT DO NOT INVOLVE DR. PANDORI.

01:20PM 4 THE REST OF THE CHAIN RELATING TO THIS ISSUE OF
01:20PM 5 PROFICIENCY TESTING RESULTS AND REPORTING INCLUDE DR. PANDORI
01:20PM 6 AND OTHERS WITHIN THE CLINICAL LAB.

01:20PM 7 MR. BOSTIC: SAME OBJECTION, YOUR HONOR.

01:20PM 8 THE COURT: THERE ARE ALSO SOME OTHER ATTACHMENTS.
01:20PM 9 ARE YOU SEEKING?

01:20PM 10 MR. CAZARES: NOT FOR NOW -- I COULD AGREE -- I HAVE
01:20PM 11 TO AGREE, IF YOUR HONOR REQUIRES IT -- REDACTING THE FIRST TWO
01:20PM 12 MESSAGES ON PAGE 1 AND OMITTING THE ATTACHMENT.

01:20PM 13 THE COURT: ALL RIGHT. AND THIS IS UNDER 803(6)?

01:21PM 14 MR. CAZARES: YES, YOUR HONOR.

01:21PM 15 THE COURT: AND I THINK YOU ASKED THIS WITNESS
01:21PM 16 WHETHER OR NOT THE EMAILS WERE RECORDED IN A WAY AND RETAINED
01:21PM 17 SUCH THAT THEY COULD BE USED AGAIN FOR REFERENCE?

01:21PM 18 DID YOU ASK THAT QUESTION?

01:21PM 19 MR. CAZARES: I DIDN'T BUT I CAN, YOUR HONOR.

01:21PM 20 THE COURT: LET'S DO THAT.

01:21PM 21 BY MR. CAZARES:

01:21PM 22 Q. DURING THE TIME YOU WERE AT THERANOS, AGAIN, EMAILS WERE
01:21PM 23 REGULARLY USED AS A MEANS OF COMMUNICATION BY YOURSELF AND
01:21PM 24 OTHERS WITHIN THE CLINICAL LAB AS WELL AS COMMUNICATION WITH
01:21PM 25 MANAGEMENT; CORRECT?

01:21PM 1

A. CORRECT.

01:21PM 2

Q. AND WHILE YOU WERE AT THERANOS, OF COURSE, YOU WEREN'T

01:21PM 3

ALWAYS THERE THROUGH THE COURSE OF YOUR CAREER, BUT WHILE YOU

01:21PM 4

WERE THERE, YOU KEPT THOSE EMAILS; CORRECT? YOU MAINTAINED

01:21PM 5

THEM?

01:21PM 6

A. THEY WERE AUTOMATICALLY MAINTAINED IN AN EMAIL BOX -- THEY

01:21PM 7

WERE AUTOMATICALLY STORED IN AN EMAIL BOX MANAGED BY THERANOS

01:21PM 8

I.T.

01:21PM 9

MR. CAZARES: MOVE TO ADMIT, YOUR HONOR.

01:21PM 10

THE COURT: ALL RIGHT. THANK YOU.

01:21PM 11

I'LL ADMIT IT WITH THE REDACTIONS AS INDICATED IN THE

01:21PM 12

EXHIBIT. THE ATTACHMENT IS NOT BEING OFFERED AT THIS TIME.

01:21PM 13

MR. CAZARES: THANK YOU, YOUR HONOR.

01:22PM 14

(DEFENDANT'S EXHIBIT 5545 WITH REDACTIONS WAS RECEIVED IN

01:22PM 15

EVIDENCE.)

01:22PM 16

BY MR. CAZARES:

01:22PM 17

Q. IF WE CAN START WITH PAGE 4 OF THE REDACTED 5545. AT THE

01:22PM 18

BOTTOM OF PAGE 4 YOU SEE THAT THERE'S A MESSAGE FROM DAN EDLIN

01:22PM 19

COPYING -- OR TO DR. ROSENDORFF TO YOURSELF MAY 5TH, 2014,

01:22PM 20

SUBJECT, UPDATED PT AUDIT RENEWAL SINCE 3/18.

01:22PM 21

DO YOU SEE THAT?

01:22PM 22

A. YES.

01:22PM 23

Q. AND IT SAYS, "HI ADAM AND MARK,

01:22PM 24

"HAVE UNDERGONE" -- "HAVE WE UNDERGONE," SORRY, "ANY NEW

01:22PM 25

PROFICIENCY TESTING OR AUDIT RENEWALS SINCE 3/18/14? IF SO,

01:22PM 1 CAN YOU PLEASE SEND ME A COPY OF THE REPORTS OR LICENSES? EAH
01:22PM 2 HAS ASKED FOR THIS AS PART OF A PRESENTATION SHE IS COMPILING
01:22PM 3 FOR TOMORROW SO WE WOULD NEED THIS TONIGHT.

01:22PM 4 "THANKS FOR YOUR HELP.

01:22PM 5 "DAN."

01:22PM 6 DO YOU SEE THAT?

01:22PM 7 A. YES.

01:22PM 8 Q. AND NOW, DAN EDLIN, HE WAS NOT A CLINICAL LAB -- HE WAS
01:22PM 9 NOT PART OF THE CLINICAL LAB; CORRECT?

01:23PM 10 A. I DON'T REMEMBER WHAT ROLE HE PLAYED.

01:23PM 11 Q. OKAY. YOU RECOGNIZE EAH AS ELIZABETH HOLMES?

01:23PM 12 A. YES.

01:23PM 13 Q. OKAY. AND SO DAN EDLIN IS REQUESTING FROM YOURSELF AND
01:23PM 14 DR. ROSENDORFF WHETHER THERE ARE ANY NEW PROFICIENCY TESTING OR
01:23PM 15 AUDIT RENEWALS SINCE MARCH 18, 2014; CORRECT?

01:23PM 16 A. CORRECT.

01:23PM 17 Q. AND THIS IS BEING REQUESTED FOR THE PURPOSES OF A
01:23PM 18 PRESENTATION BY ELIZABETH HOLMES; CORRECT?

01:23PM 19 A. YES.

01:23PM 20 Q. AND DR. ROSENDORFF RESPONDS IN THE NEXT MESSAGE TO
01:23PM 21 DANIEL EDLIN, COPYING YOURSELF, "DANIEL, WE ARE CONTINUALLY
01:23PM 22 DOING PROFICIENCY TESTING. LANGLEY OR BRAD CAN FILL YOU IN ON
01:23PM 23 STATE BY STATE APPLICATION/STATUS."

01:23PM 24 DO YOU SEE THAT?

01:23PM 25 A. I SEE THAT.

01:23PM 1 Q. AND THEN EDLIN RESPONDS ADDING OTHERS TO THE MESSAGE.

01:23PM 2 "DO WE HAVE ANY UPDATED REPORTS OR LICENSES SINCE 3/18?"

01:23PM 3 DO YOU SEE THAT?

01:24PM 4 A. YES.

01:24PM 5 Q. AND THEN DR. ROSENDORFF RESPONDS AT THE BOTTOM OF PAGE 3,

01:24PM 6 "LANGLY," AND THEN IT CONTINUES ON PAGE 4 AT THE TOP, "MAYBE

01:24PM 7 SHOW OUR 100 PERCENT GRADE IN HEMATOLOGY?"

01:24PM 8 DO YOU SEE THAT?

01:24PM 9 A. YES.

01:24PM 10 Q. AND HEMATOLOGY IS AN ANALYTE THAT IS SUBJECT TO

01:24PM 11 PROFICIENCY TESTING REQUIREMENTS; CORRECT?

01:24PM 12 A. YES.

01:24PM 13 Q. AND HEMATOLOGY IS A CATEGORY OF TESTING THAT WAS RUN AT

01:24PM 14 THERANOS ON PREDICATE METHODS BUT ALSO ON THERANOS PROPRIETARY

01:24PM 15 METHODS; CORRECT?

01:24PM 16 A. YES.

01:24PM 17 Q. AND THEN CONTINUING ON THE MESSAGE, LANGLY GEE RESPONDS TO

01:24PM 18 DR. ROSENDORFF, YOURSELF, AND DAN EDLIN, COPYING ARINGTON.

01:24PM 19 "HERE ARE SURVEYS PERFORMED IN SCORES AND UPDATE TO

01:24PM 20 LICENSURES SINCE 3/18."

01:24PM 21 DO YOU SEE THAT?

01:24PM 22 A. YES.

01:24PM 23 Q. AND THEN THESE SCORES ARE FOR WHAT APPEAR TO BE TESTING

01:25PM 24 EVENTS, OR CHALLENGES, AT THERANOS INCLUDING MICROBIOLOGY,

01:25PM 25 TOXICOLOGY, HIV, INFECTIOUS DISEASE, CLINICAL MICROSCOPY AND

01:25PM 1 API HEMATOLOGY.

01:25PM 2 DO YOU SEE THAT?

01:25PM 3 A. YES.

01:25PM 4 Q. AS WELL AS INFECTIOUS DISEASE, SEROLOGY, AND THE SCORES

01:25PM 5 ARE ALL 100 PERCENT?

01:25PM 6 A. YES.

01:25PM 7 Q. AND THIS WOULD BE PROFICIENCY TESTING CHALLENGES CONDUCTED

01:25PM 8 IN THE CLINICAL LAB DURING THE TIME PERIOD THAT YOU WERE

01:25PM 9 WORKING IN THE CLINICAL LAB; CORRECT?

01:25PM 10 A. YES.

01:25PM 11 Q. IN RESPONSE TO MR. GEE FORWARDING THE PROFICIENCY TESTING

01:25PM 12 SCORES, MR. ARINGTON RESPONDS AT THE BOTTOM OF PAGE 2, "JUST A

01:25PM 13 COUPLE OF CLARIFICATIONS. I BELIEVE THAT MARYLAND AND FLORIDA

01:25PM 14 ARE CURRENTLY VALID LICENSES, BUT ARE UP FOR RENEWAL ON THE

01:25PM 15 DATES NOTED BY LANGLEY. (PLEASE CONFIRM). AS FOR NEW JERSEY,

01:26PM 16 THE RENEWAL IS PENDING OBTAINING A BIO ANALYTICAL LABORATORY

01:26PM 17 DIRECTOR LICENSE WITH THE NEW JERSEY BOARD OF MEDICINE AND I

01:26PM 18 BELIEVE ADAM IS TAKING CARE OF THAT."

01:26PM 19 DO YOU SEE THAT?

01:26PM 20 A. I DO.

01:26PM 21 Q. WERE YOU AWARE THAT THERANOS HAD CLINICAL LICENSES, CLIA

01:26PM 22 LICENSES IN STATES OTHER THAN CALIFORNIA?

01:26PM 23 A. I RECALL THAT THEY WERE SEEKING THEM, AND I BELIEVE THEY

01:26PM 24 HAD THEM IN ARIZONA, BUT I WASN'T SURE OF THE ENTIRE SUITE.

01:26PM 25 Q. AND THE MESSAGE IS REFERRING TO OTHER STATES THAT IT

01:26PM 1 APPEARS THAT THERANOS MAY HAVE HAD OR WAS PURSUING LICENSES;
01:26PM 2 CORRECT?

01:26PM 3 A. YEAH, IT WOULD APPEAR SO.

01:26PM 4 Q. AND THEN IN RESPONSE MR. GEE WRITES, "ALL," THIS IS THE
01:26PM 5 MIDDLE OF PAGE 2, "MARYLAND AND FLORIDA ARE CURRENT VALID
01:26PM 6 LICENSES AND THE RENEWAL DATES ARE LISTED.

01:26PM 7 "MARYLAND SHOULD BE SENDING THE RENEWAL PAPERWORK BY MAY
01:26PM 8 19TH, 2014."

01:27PM 9 DO YOU SEE THAT?

01:27PM 10 A. YES.

01:27PM 11 Q. AND THEN IN RESPONSE TO MR. GEE REPORTING THOSE LICENSE
01:27PM 12 STATUSES, THERE ARE MESSAGES FROM DAN EDLIN.

01:27PM 13 "PLEASE SEND THE LATEST VERSIONS OF THESE REPORTS IN PDF."

01:27PM 14 DO YOU SEE THAT?

01:27PM 15 A. YES.

01:27PM 16 Q. OKAY. YOU CAN SET THAT ASIDE.

01:27PM 17 THE COURT: COUNSEL, SHOULD WE TAKE OUR BREAK NOW
01:27PM 18 BEFORE YOU MOVE INTO ANOTHER AREA? I DON'T WANT TO INTERRUPT
01:27PM 19 YOU.

01:27PM 20 WE WERE GOING TO BREAK AT 1:30.

01:27PM 21 MR. CAZARES: YOUR HONOR, THIS IS A VERY GOOD SPOT,
01:27PM 22 YES.

01:27PM 23 THE COURT: LET'S TAKE OUR AFTERNOON BREAK, LADIES
01:27PM 24 AND GENTLEMEN. IT WILL BE 30 MINUTES, PLEASE, 30 MINUTES.

01:28PM 25 (JURY OUT AT 1:28 P.M.)

01:28PM 1 THE COURT: THE RECORD SHOULD REFLECT THAT THE JURY
01:28PM 2 HAS LEFT FOR BREAK. DR. PANDORI HAS LEFT THE COURTROOM.

01:28PM 3 ALL COUNSEL AND THE DEFENDANT IS PRESENT.

01:28PM 4 I JUST WANT TO TALK ABOUT 20418, WHICH WAS THE GP 29-A2
01:29PM 5 CLIA DOCUMENT THAT WAS SOUGHT TO BE ADMITTED.

01:29PM 6 I JUST HAVE SOME QUESTIONS ABOUT -- WE HAD SOME ROBUST
01:29PM 7 DISCUSSION THIS MORNING REGARDING EXPERTISE AND, FOR EXAMPLE, I
01:29PM 8 DRAW YOUR ATTENTION TO PAGE 21 -- PAGE 31 OF THE DOCUMENT
01:29PM 9 THERE'S FORMULA 2 IS SOMETHING THAT I CAN'T DESCRIBE.

01:29PM 10 APPENDIX A HAS A CHART WITH AN X AND A Y AXIS THAT HAS
01:29PM 11 SOME INFORMATION ON IT.

01:29PM 12 I RAISE THESE POINTS TO SUGGEST THAT THIS IS A CONCERN
01:29PM 13 THAT I HAVE ABOUT THIS GOING TO THE JURY AND WHAT IS THE
01:29PM 14 RELEVANCE OF PAGE 29 OF THE EXHIBIT ALSO HAS FORMULA 1 THAT --
01:29PM 15 I'LL GIVE COUNSEL FIVE MINUTES TO SOLVE FOR US BEFORE WE GO
01:30PM 16 FORWARD IF YOU WANT.

01:30PM 17 MY POINT IS, WHAT IS THE RELEVANCE OF HAVING THE JURY HAVE
01:30PM 18 THE ENTIRETY OF THE DOCUMENT? MY SENSE IS THAT THE WITNESS
01:30PM 19 TESTIFIED ABOUT GP 29 AND WHAT THAT MEANT. HE SAID HE WASN'T
01:30PM 20 CERTAIN EXACTLY ABOUT WHAT EXACTLY THE DOCUMENT WAS OR WHAT
01:30PM 21 THAT TESTING WAS, AND --

01:30PM 22 MR. CAZARES: YOUR HONOR, I THINK THE WITNESS
01:30PM 23 TESTIFIED THAT HE REVIEWED THE CLSI GUIDELINES IN RELATION TO
01:30PM 24 THE PROPRIETARY OF AAP FOR PROFICIENCY TESTING IN THERANOS'S
01:30PM 25 EDISON DEVICE.

01:30PM 1 THE COURT: RIGHT.

01:30PM 2 MR. CAZARES: HE SAID HE HAD DISCUSSIONS WITH OTHER
01:30PM 3 LAB DIRECTORS PRIOR TO JOINING THERANOS ABOUT, AGAIN, THAT SAME
01:30PM 4 ISSUE; HE HAS RAISED QUESTIONS ABOUT THE PROPRIETARY OF
01:30PM 5 DR. ROSENDORFF'S SIGNED SOP AND THE TERMS. YOU SAW HE
01:30PM 6 DISAGREED WITH SOME OF THOSE ISSUES, WHICH IS THE FOUNDATION OF
01:31PM 7 SOME OF HIS TESTIMONY ABOUT THE ENTIRE PROFICIENCY TESTING
01:31PM 8 PROGRAM AT THERANOS.

01:31PM 9 THE CLSI GUIDELINE IS REFERENCED BY DR. ROSENDORFF AS A
01:31PM 10 BASES FOR HIS PROCEDURE AS LAB DIRECTOR BY IMPLEMENTING IT, AND
01:31PM 11 I THINK I SHOULD BE PERMITTED TO CONFRONT THIS WITNESS AND HIS
01:31PM 12 TESTIMONY CHALLENGING DR. ROSENDORFF'S SOP WITH THE VERY
01:31PM 13 DOCUMENT THAT BOTH THIS WITNESS IS FAMILIAR WITH AND THAT
01:31PM 14 DR. ROSENDORFF RELIED UPON IN DEVELOPING THE SOP.

01:31PM 15 THE COURT: WELL, THAT'S ONE THING CHALLENGING HIM,
01:31PM 16 BUT ADMITTING IT INTO EVIDENCE IS WHAT YOU SOUGHT TO DO.

01:31PM 17 MR. CAZARES: YES, YOUR HONOR.

01:31PM 18 THE COURT: AND THAT'S THE CONCERN THAT I HAVE.

01:31PM 19 AND HE DID SAY THAT -- I THOUGHT HE HAD A QUALIFIED ANSWER
01:31PM 20 AS TO WHETHER HE SAW THIS OR NOT.

01:31PM 21 MR. BOSTIC.

01:31PM 22 MR. BOSTIC: THAT'S MY RECOLLECTION AS WELL,
01:31PM 23 YOUR HONOR. I DON'T BELIEVE THE WITNESS TESTIFIED THAT HE HAD
01:31PM 24 HAD REVIEWED THIS PARTICULAR DOCUMENT.

01:31PM 25 EVEN IF HE HAD, I THINK THAT REASONING COULD POTENTIALLY

01:31PM 1 OPEN THE DOOR TO A WIDE RANGE OF TECHNICAL AND SCIENTIFIC
01:32PM 2 LITERATURE AND MATERIALS THAT AREN'T AUTOMATICALLY ADMISSIBLE
01:32PM 3 IN THIS CASE.

01:32PM 4 I SHARE THE COURT'S CONCERN ABOUT THE TECHNICAL AND
01:32PM 5 COMPLICATED NATURE OF THIS DOCUMENT. I DON'T THINK IT'S
01:32PM 6 APPROPRIATE TO ASK THE JURY TO INTERPRET THESE GUIDELINES AND
01:32PM 7 MAKE A JUDGMENT AS TO WHETHER THERANOS'S PRACTICES COMPLIED
01:32PM 8 WITH THEM OR NOT.

01:32PM 9 AND IF COUNSEL IS SEEKING TO SOLICIT THE WITNESS'S
01:32PM 10 OPINION, HIS INTERPRETATION OF THESE GUIDELINES, I THINK THAT'S
01:32PM 11 INCONSISTENT WITH THE POSITION THEY'VE TAKEN ON 702 TESTIMONY
01:32PM 12 HERE.

01:32PM 13 I THINK IN CROSS-EXAMINATION ALREADY THERE HAVE BEEN
01:32PM 14 SEVERAL QUESTIONS ASKING THIS WITNESS IF HE AGREED WITH
01:32PM 15 STATEMENTS BY MR. BALWANI OR JUDGMENTS BY OTHER TECHNICAL
01:32PM 16 PERSONNEL AT THERANOS, AND I THINK THOSE HAVE CROSSED THE LINE
01:32PM 17 WHEN IT COMES TO 702 AND SEEKING THAT KIND OF OPINION TESTIMONY
01:32PM 18 AS WELL.

01:32PM 19 I THINK THIS WOULD BE A STEP FURTHER IN THE WRONG
01:32PM 20 DIRECTION.

01:32PM 21 MR. CAZARES: YOUR HONOR, THIS WITNESS HAS TESTIFIED
01:32PM 22 QUITE STRENUOUSLY REGARDING HIS EXPERIENCE. THE GOVERNMENT
01:33PM 23 DREW THAT OUT IN BUFFERING HIS TESTIMONY, AND HE HAS OPINED ON
01:33PM 24 CAUSATION ISSUES RELATING TO THE EDISON DEVICE AS WELL AS
01:33PM 25 OPINED ON THE FACT THAT WHAT HE OBSERVED REGARDING THE

01:33PM 1 PROFICIENCY TESTING PROGRAM WAS INAPPROPRIATE AND INSUFFICIENT
01:33PM 2 UNDER THE REGULATIONS. THIS IS A LEARNED TREATISE BY HIS OWN
01:33PM 3 ADMISSION THAT HE'S FAMILIAR WITH, REVIEWED.

01:33PM 4 DR. ROSENDORFF --

01:33PM 5 THE COURT: I'M NOT -- LET'S CHECK THE TRANSCRIPT TO
01:33PM 6 SEE IF HE SAID HE REVIEWED IT.

01:33PM 7 MR. CAZARES: THERE WERE TWO ANSWERS.

01:33PM 8 ONE WAS, YES, I REVIEWED IT. I TRIED TO PRESS HIM. YOU
01:33PM 9 STUDIED IT CLOSELY, AND HE RESISTED THAT. THAT'S WHERE I WAS
01:33PM 10 GOING TO IMPEACH HIM WITH A PRIOR STATEMENT, BUT HE DID SAY
01:33PM 11 YES.

01:33PM 12 MR. BOSTIC: MY MEMORY, YOUR HONOR, IS THAT HE
01:33PM 13 STATED THAT HE IS FAMILIAR WITH SOME OF THE CLSI GUIDELINES,
01:33PM 14 BUT HE DID NOT KNOW WHETHER HE HAD REVIEWED GP 29, WHICH IS THE
01:34PM 15 ONE THAT WE'RE TALKING ABOUT NOW.

01:34PM 16 THE COURT: AND THAT'S MY REC -- PERHAPS WE SHOULD
01:34PM 17 LOOK AT THE TRANSCRIPT.

01:34PM 18 BUT MY POINT IS I'M RETICENT TO ADMIT THE DOCUMENT.

01:34PM 19 I DON'T HAVE A PROBLEM WITH YOU TESTING THIS WITNESS'S
01:34PM 20 KNOWLEDGE, OR WHATEVER, ABOUT HIS AGREEMENT OR NOT, BUT TO
01:34PM 21 ALLOW THE DOCUMENT TO COME IN, I THINK IT'S GOING TO HAVE
01:34PM 22 THIS -- ARE YOU GOING TO ASK THIS JURY THEN TO GO BACK AND LOOK
01:34PM 23 AT THIS AND ASK THEM TO REVIEW REFERENCE METHOD, REGRESSION
01:34PM 24 ANALYSIS, QUALITY MANAGEMENT, PROFICIENCY TESTING, SPECIAL
01:34PM 25 CAUSE VARIATION? ALL OF THOSE THINGS ARE LISTED IN HERE AS YOU

01:34PM 1 KNOW.

01:34PM 2 MR. CAZARES: UNDERSTOOD, YOUR HONOR.

01:34PM 3 THERE ARE COMPLICATED SCIENTIFIC ISSUES REFERENCED ALL
01:34PM 4 OVER THIS CASE, INCLUDING MANY OF THE EMAILS CIRCULATED IN THIS
01:34PM 5 CASE, AND UNFORTUNATELY THAT'S THE CASE THAT WE HAVE AND ARE
01:34PM 6 PRESENTED WITH.

01:35PM 7 WITH RESPECT TO MY EXAMINATION OF THE WITNESS WITH THE
01:35PM 8 DOCUMENT WITHOUT ADMITTING IT, YOUR HONOR, OF COURSE, IF I'M
01:35PM 9 GIVEN SOME LATITUDE IN SHOWING HIM THE DOCUMENT, AS HE'S
01:35PM 10 ALREADY BEEN GIVEN IN REVIEWING PUBLICATIONS NOT IN EVIDENCE,
01:35PM 11 AND I'M ABLE TO ASK QUESTIONS SIMILARLY TO THE GOVERNMENT'S
01:35PM 12 QUESTIONS ABOUT THE SUBSTANCE OF THE ACTUAL DOCUMENT DESPITE
01:35PM 13 THE FACT THAT IT'S NOT IN EVIDENCE, YES, I CAN ACCOMPLISH WHAT
01:35PM 14 I NEED WITHOUT IT BEING IN EVIDENCE.

01:35PM 15 WE MAY HAVE ANOTHER WITNESS LATER ON IN THE TRIAL WHO WE
01:35PM 16 CAN TRY TO GET IT THROUGH, BUT I UNDERSTAND THE COURT'S
01:35PM 17 CONCERNS.

01:35PM 18 THE COURT: I DON'T HAVE A PROBLEM IN ADMITTING
01:35PM 19 PAGE 1, WHICH IS THE COVER PAGE THAT IDENTIFIES WHAT IT IS, AND
01:35PM 20 THAT WOULD INFORM THE JURY AS TO WHAT THIS THING IS THAT HE'S
01:35PM 21 TALKING ABOUT.

01:35PM 22 THE CONTENTS AND ALL OF THE TECHNOLOGY, AND I THINK
01:35PM 23 MR. BOSTIC IS ACCURATE, I THINK YOU WOULD AGREE WITH HIM THAT
01:35PM 24 BOTH OF THE EXAMINATIONS HAVE DRIFTED AS WE TALKED ABOUT THIS
01:35PM 25 MORNING IN OUR 702 CONVERSATION.

01:35PM 1 I'VE GIVEN LATITUDE. THE CASE IS A SCIENTIFIC CASE. IT
01:36PM 2 INVOLVES THESE TYPES OF TOPICS THAT, AS I TOLD YOU THIS
01:36PM 3 MORNING, YOUR COLLEAGUE THIS MORNING, I DON'T BELIEVE IT
01:36PM 4 DRIFTED INTO THE NECESSITY OF 702 MUCH LIKE THIS AFTERNOON. WE
01:36PM 5 DIDN'T HEAR ANY 702 OBJECTIONS THIS AFTERNOON.

01:36PM 6 MY SENSE IS THAT THE INFORMATION GAINED AND THE QUESTIONS
01:36PM 7 ASKED WERE VERY SIMILAR TO THE ONES OF THE PREVIOUS DAY'S
01:36PM 8 TESTIMONY OF WITNESSES DESCRIBING, AND I'M GIVING COUNSEL
01:36PM 9 LATITUDE TO TALK ABOUT THESE THINGS TO INFORM THE JURY.

01:36PM 10 AND I BELIEVE THEY CAN BE INFORMED ABOUT WHAT THIS IS,
01:36PM 11 WHAT AN AAP IS, WHY YOU DO THAT, WHY WOULD SOMEONE DO THAT.

01:36PM 12 BUT THE WITNESS'S -- DR. PANDORI WENT A LITTLE FURTHER
01:36PM 13 TALKING ABOUT SOME OTHER THINGS, AND THERE WAS NO OBJECTION,
01:36PM 14 AND YOU ASKED THE QUESTION, AND THAT'S FINE.

01:36PM 15 SO IT'S -- AGAIN, WE'RE WALKING THAT CAT WALK, AREN'T WE,
01:36PM 16 ABOUT HOW FAR IS 702 AND HOW MUCH IS REALLY HELPFUL TO THE
01:36PM 17 JURY?

01:36PM 18 I'M NOT GOING TO ADMIT THE ENTIRETY OF THE DOCUMENT FOR
01:36PM 19 THE REASONS THAT I HAVE INDICATED. I JUST THINK IT WOULD
01:37PM 20 REQUIRE -- MAYBE YOU HAVE A WITNESS WHO CAN OPINE TO IT.

01:37PM 21 I WILL ALLOW YOU, AND I WILL ADMIT THE COVER, THE COVER
01:37PM 22 SHEET TO, IF YOU WISH THAT, TO GUIDE YOUR EXAMINATION AND TO
01:37PM 23 GIVE CONTEXT TO YOUR EXAMINATION IF YOU WANT TO ASK HIM
01:37PM 24 QUESTIONS ABOUT THE CONTEXT.

01:37PM 25 MR. CAZARES: UNDERSTOOD, YOUR HONOR. YES,

01:37PM 1 YOUR HONOR.

01:37PM 2 THE COURT: AND I'LL DO THAT IN FRONT OF THE JURY IF
01:37PM 3 YOU WOULD LIKE. AND IF YOU WANT TO RENEW IT, WE'LL TAKE IT UP
01:37PM 4 THEN.

01:37PM 5 MR. CAZARES: YES.

01:37PM 6 MR. BOSTIC: CAN I OFFER ONE THOUGHT?

01:37PM 7 THE COURT: YES.

01:37PM 8 MR. BOSTIC: IN DETERMINING THE BOUNDS OF THAT
01:37PM 9 QUESTIONING, I NOTICE A DIFFERENCE BETWEEN THIS DOCUMENT AND
01:37PM 10 THE ARTICLE THAT THE WITNESS WAS QUESTIONED ON EARLIER.

01:37PM 11 AND THE DEFENSE IS, OF COURSE, RIGHT THAT THIS CASE
01:37PM 12 INVOLVES TECHNICAL INFORMATION AND MATERIALS, THAT'S BEEN THE
01:37PM 13 FORM OF EVIDENCE SO FAR. THIS IS NOT EVIDENCE THAT SHOWS WHAT
01:37PM 14 HAPPENED AT THERANOS. THIS IS AN ADDITIONAL SET OF STANDARDS.

01:37PM 15 SO THERE'S A DIFFERENCE BETWEEN ASKING A WITNESS TO
01:37PM 16 DESCRIBE WHAT HAPPENED IN REFERENCING INTERNAL DOCUMENTS OR
01:38PM 17 ASKING HIM TO DESCRIBE WHAT HE SAW IN THE PRESS AT THE TIME.

01:38PM 18 AND THIS, WHICH WOULD BE BRINGING IN A NEW SET OF STANDARDS AND
01:38PM 19 GUIDELINES AND CRITERIA AND ASKING THE WITNESS TO OPINE ON
01:38PM 20 PRESUMABLY WHETHER THE THERANOS PRACTICES WERE CONSISTENT WITH
01:38PM 21 THAT OR NOT, AND I WOULD OBJECT TO THAT UNDER BOTH THE HEARSAY
01:38PM 22 BUT UNDER 401 AND 403.

01:38PM 23 THE COURT: WELL, THAT --

01:38PM 24 MR. CAZARES: YOUR HONOR, VERY BRIEFLY. I DISAGREE.

01:38PM 25 THE PURPOSE OF THE EVIDENCE IS TO DEMONSTRATE THE

01:38PM 1 CONSISTENCY OF THE ACCEPTED GUIDELINES THAT DR. PANDORI HIMSELF
01:38PM 2 SAYS THAT HE CONSULTED AS REFERENCED BY DR. ROSENDORFF AND WERE
01:38PM 3 RELIED UPON DR. ROSENDORFF TO IMPLEMENT THE AAP PROGRAM THAT
01:38PM 4 THIS WITNESS HAS NOW SAID WAS INSUFFICIENT.

01:38PM 5 SO THAT INFORMS WHAT ACTUALLY HAPPENED AT THE LAB. AND
01:38PM 6 AGAIN, THE WITNESS CAN HAVE AGREEMENT WITH WHETHER THAT WAS
01:38PM 7 APPROPRIATE OR NOT, BUT THE WITNESS HAS REFERENCED THINGS THAT
01:38PM 8 THE CLSI GUIDELINES AS SOMETHING THAT HE AND PROFESSIONALS LIKE
01:39PM 9 HIM RELY UPON, AND I THINK IT IS EVIDENCE AND IT SHOULD BE
01:39PM 10 ADMITTED. BUT I UNDERSTAND THE COURT IS NOT GOING TO DO SO FOR
01:39PM 11 NOW, AND WE MAY HAVE ANOTHER WITNESS LATER, BUT I WILL PROBABLY
01:39PM 12 USE IT ON CROSS-EXAMINATION.

01:39PM 13 THE COURT: WELL, LET'S SEE WHAT HE SAYS.

01:39PM 14 MY RECOLLECTION IS THAT HE LOOKED AT THIS, HE LOOKED AT
01:39PM 15 GP 29, AND HE LOOKED AT THIS AND SAID -- HE MENTIONED SOMETHING
01:39PM 16 ABOUT THIS NOT REALLY BEING -- COVERING THE GP 29 THAT HE HAD
01:39PM 17 FAMILIARITY WITH. I SAY THAT IN ADVANCE. THERE MIGHT BE --
01:39PM 18 THIS MIGHT BE OUTSIDE OF THE SCOPE OF HIS PERSONAL KNOWLEDGE OR
01:39PM 19 EXPERIENCE. HE MAY NOT HAVE READ THIS.

01:39PM 20 AND IF HE DIDN'T, THEN IT'S NOT RELEVANT TO HIS THOUGHT
01:39PM 21 PROCESS, CRITICISMS. IF YOU HAVE THE DOCUMENT THAT HE DID
01:39PM 22 READ, THAT'S A DIFFERENT STORY, BUT I --

01:39PM 23 MR. CAZARES: I UNDERSTAND, YOUR HONOR. I THINK
01:39PM 24 WE'LL HAVE TO WORK IT OUT WITH SOME FURTHER QUESTIONING.

01:39PM 25 THE COURT: WE'LL SEE WHAT HE SAYS. RIGHT. OKAY.

01:39PM 1 THANK YOU.

01:39PM 2 MR. BOSTIC: FINALLY -- APOLOGIES, YOUR HONOR.

01:39PM 3 ONE HOUSEKEEPING MATTER. LET ME ALERT THE DEFENSE AND THE
01:39PM 4 COURT TO A SCHEDULING ISSUE WITH THIS WITNESS NOW THAT I SEE
01:40PM 5 HOW LONG THE CROSS-EXAMINATION IS LIKELY TO CONTINUE.

01:40PM 6 THIS WITNESS IS THE LAB DIRECTOR FOR A PUBLIC LAB IN
01:40PM 7 ALAMEDA COUNTY. MY UNDERSTANDING IS THAT THEY HAVE A CLIA
01:40PM 8 INSPECTION ON TUESDAY.

01:40PM 9 I'M NOT SURE -- AND I HAVEN'T BEEN IN TOUCH WITH THE
01:40PM 10 WITNESS RECENTLY BECAUSE HE'S ON CROSS-EXAMINATION, BUT I
01:40PM 11 UNDERSTAND THAT HE MAY FEEL THE NEED TO BE PRESENT AT THE
01:40PM 12 ALAMEDA LAB FOR THAT INSPECTION.

01:40PM 13 SO I'M NOT SURE HOW MUCH MORE COUNSEL HAS PLANNED, BUT I
01:40PM 14 WANTED TO ALERT THE COURT.

01:40PM 15 THE COURT: OKAY. I HAVE RECOLLECTION I HEARD
01:40PM 16 SOMEWHERE, A MONTH OR SO AGO, ABOUT LAB DIRECTORS NEEDING TO BE
01:40PM 17 PRESENT AT CLIA INSPECTIONS. I DON'T KNOW WHERE. IT JUST
01:40PM 18 COMES TO MIND.

01:40PM 19 MR. CAZARES: YOUR HONOR, I RECOGNIZE THE ISSUE. I
01:40PM 20 WILL NOT BE FINISHED TODAY.

01:40PM 21 THE COURT: OKAY.

01:40PM 22 MR. CAZARES: SO I GUESS WE'LL HAVE TO DEAL WITH THE
01:40PM 23 SCHEDULING ISSUE.

01:40PM 24 THE COURT: WE'LL TAKE OUR BREAK. MAYBE YOU CAN
01:40PM 25 TALK ABOUT THAT, AND WE'LL SEE WHERE IT TAKES US.

01:40PM 1 NEXT WEEK, REMIND ME, WE'RE NOT -- I KNOW THERE WAS SOME
01:40PM 2 TRAVEL FOR A JUROR ON FRIDAY I THINK.

01:41PM 3 THE CLERK: THURSDAY AND FRIDAY.

01:41PM 4 (RECESS FROM 1:41 P.M. UNTIL 2:05 P.M.)

02:05PM 5 (JURY IN AT 2:05 P.M.)

02:05PM 6 THE COURT: THANK YOU. WE'RE BACK ON THE RECORD.
02:05PM 7 ALL COUNSEL ARE PRESENT.

02:05PM 8 THE JURY IS PRESENT.

02:05PM 9 MR. BALWANI IS PRESENT.

02:05PM 10 DR. PANDORI IS BACK ON THE STAND.

02:05PM 11 COUNSEL, WOULD YOU LIKE TO RESUME?

02:06PM 12 MR. CAZARES: YES, YOUR HONOR. THANK YOU VERY MUCH.

02:06PM 13 I APOLOGIZE, YOUR HONOR.

02:06PM 14 Q. GOOD AFTERNOON, DR. PANDORI.

02:06PM 15 A. GOOD AFTERNOON.

02:06PM 16 Q. RETURNING BACK TO A TOPIC WE DISCUSSED A LITTLE BIT HERE,
02:06PM 17 OR ACTUALLY QUITE A BIT HERE, REGARDING THE AAP SOP, THE
02:06PM 18 PROCEDURES FOR THE EDISON DEVICE.

02:06PM 19 WE'VE TALKED ABOUT THE PRIOR SOP FROM DECEMBER OF 2013
02:06PM 20 THAT DR. ROSENDORFF SIGNED OFF ON THAT YOU SAID THAT YOU HADN'T
02:06PM 21 BEEN AWARE OF BACK IN LATE 2013 AND 2014; CORRECT?

02:06PM 22 A. I THINK HE -- YOU'RE REFERRING TO AN SOP THAT HE SIGNED
02:06PM 23 OFF ON IN NOVEMBER OF 2013 I BELIEVE.

02:06PM 24 Q. THAT'S YOUR RECOLLECTION? I'M JUST ASKING IS THAT YOUR
02:06PM 25 RECOLLECTION?

02:06PM 1 A. I THOUGHT THAT'S WHAT IT SAID.

02:06PM 2 Q. OKAY. AND YOU WERE UNAWARE OF THAT IN THAT EARLY TIME

02:07PM 3 PERIOD OF YOUR EMPLOYMENT IN DECEMBER 2013 AND JANUARY 2014?

02:07PM 4 A. CORRECT.

02:07PM 5 Q. OKAY. AND I POINTED OUT SOME PROVISIONS WITHIN THAT SOP

02:07PM 6 AND YOU DISAGREED WITH SOME OF THOSE; CORRECT?

02:07PM 7 A. UM, I HAD NOT REVIEWED IT PRIOR.

02:07PM 8 Q. SO YOU'RE NOW SAYING THAT YOU DIDN'T DISAGREE WITH THE

02:07PM 9 PROGRAM?

02:07PM 10 A. OH, I WOULD HAVE -- I WAS IMPLYING THAT MAYBE IT WOULD

02:07PM 11 HAVE BENEFITTED FROM SOME REVIEW.

02:07PM 12 Q. OKAY. IF YOU COULD TURN TO EXHIBIT 7440. THAT SHOULD BE

02:07PM 13 IN YOUR SECOND BINDER.

02:07PM 14 ACTUALLY, I'M SORRY. IT'S BINDER 1, VOLUME 1, DEFENSE

02:07PM 15 7440.

02:08PM 16 A. 7440.

02:08PM 17 Q. 7440. GOT IT?

02:08PM 18 A. GOT IT.

02:08PM 19 Q. 7440 IS AN EMAIL WITH AN ATTACHMENT.

02:08PM 20 THE FIRST PAGE OF 7440 APPEARS TO BE AN EMAIL FROM

02:08PM 21 YOURSELF TO MR. BALWANI?

02:08PM 22 A. YES.

02:08PM 23 Q. APRIL 17TH, 2014?

02:08PM 24 A. YES.

02:08PM 25 Q. OKAY.

02:08PM 1 MOVE TO ADMIT 7440, YOUR HONOR.

02:08PM 2 MR. BOSTIC: NO OBJECTION.

02:08PM 3 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:08PM 4 (DEFENDANT'S EXHIBIT 7440 WAS RECEIVED IN EVIDENCE.)

02:08PM 5 BY MR. CAZARES:

02:08PM 6 Q. LOOKING AT THE FIRST PAGE, DR. PANDORI, THE SUBJECT LINE

02:08PM 7 REFERENCES SLIDES PT, AAP.

02:08PM 8 DO YOU SEE THAT?

02:08PM 9 A. YES.

02:08PM 10 Q. AND PT REFERRED TO PROFICIENCY TESTING?

02:08PM 11 A. YES.

02:08PM 12 Q. AND AAP, ALTERNATIVE ASSESSMENT PROCEDURE?

02:08PM 13 A. YES.

02:08PM 14 Q. OKAY. AND THEN THERE'S AN ATTACHMENT REFERENCE THE WITHIN

02:08PM 15 THE EMAIL?

02:08PM 16 A. YES.

02:08PM 17 Q. OKAY. AND YOU WROTE TO MR. BALWANI, "ATTACHED, A

02:08PM 18 SLIDESHOW I PUT TOGETHER GIVING AN OVERVIEW OF AAP AND HOW IT

02:08PM 19 WORKS AND WHY IT IS BETTER THAN PT."

02:09PM 20 DO YOU SEE THAT?

02:09PM 21 A. YES.

02:09PM 22 Q. AND YOU ALSO WROTE, "I AM HAPPY TO ADD THIS. I PURPOSELY

02:09PM 23 AVOIDED GETTING INTO THE TECHNICAL ASPECTS OF PASSING AND

02:09PM 24 FAILING. WE CAN CERTAINLY ADD CRITERIA, ET CETERA."

02:09PM 25 DO YOU SEE THAT?

02:09PM 1 A. YES.

02:09PM 2 Q. "IF OK, I AIM TO PRESENT THIS AT STAFF MEETING ON

02:09PM 3 THURSDAY.

02:09PM 4 "THANKS, MARK PANDORI."

02:09PM 5 DO YOU SEE THAT?

02:09PM 6 A. YES.

02:09PM 7 Q. AND SO YOU WERE PRESENTING TO MR. BALWANI A POWERPOINT

02:09PM 8 PRESENTATION REGARDING THE EDISON ON THIS DATE; CORRECT?

02:09PM 9 A. I WAS ASKING TO DO SO.

02:09PM 10 Q. AND YOU DID SO?

02:09PM 11 A. I RECALL.

02:09PM 12 Q. OKAY. AND YOU PUT TOGETHER THE POWERPOINT; CORRECT?

02:09PM 13 A. YES.

02:09PM 14 Q. AND YOU SENT IT TO MR. BALWANI?

02:09PM 15 A. YES.

02:09PM 16 Q. OKAY. AND IF WE COULD PUT PAGE 2, THE FIRST PAGE OF THE

02:09PM 17 ATTACHMENT UP, THE FIRST PAGE OF THE PRESENTATION IS TITLED

02:09PM 18 PROFICIENCY TESTING AND QUALITY ASSESSMENT OF THERANOS METHODS.

02:09PM 19 DO YOU SEE THAT?

02:09PM 20 A. I DO.

02:10PM 21 Q. AND AGAIN, THIS IS SOMETHING THAT YOU PREPARED?

02:10PM 22 A. YES.

02:10PM 23 Q. AND TURNING TO THE SECOND PAGE OF THE EXHIBIT, THE

02:10PM 24 POWERPOINT REGARDING AAP, THE PRESENTATION REFERENCES CMS, AKA

02:10PM 25 CLIA, REQUIRES ALL TESTS FOR CERTAIN REGULATED ANALYTES ARE

02:10PM 1 EVALUATED FOR ACCURACY ON A ROUTINE BASIS.

02:10PM 2 THAT IS YOUR UNDERSTANDING OF WHAT CLIA REQUIRES; CORRECT?

02:10PM 3 A. CORRECT.

02:10PM 4 Q. AND THREE EXTERNAL CHALLENGES PER YEAR.

02:10PM 5 YOU'VE TESTIFIED TO THAT; CORRECT?

02:10PM 6 A. CORRECT.

02:10PM 7 Q. AND PRIVATE AGENCIES PROVIDE SYNTHETIC, PRESERVED,

02:10PM 8 SPECIMEN PANELS.

02:10PM 9 DO YOU SEE THAT?

02:10PM 10 A. YES.

02:10PM 11 Q. AND THAT'S ACCURATE?

02:10PM 12 A. FOR SOME AGENCIES, YES.

02:10PM 13 Q. OKAY. AND THEN THE NEXT PAGE IN YOUR PRESENTATION TO

02:10PM 14 MR. BALWANI YOU WROTE, "PANELS ARE TESTED BY MULTIPLE

02:10PM 15 LABORATORIES ON VARIOUS TYPES OF EQUIPMENT TO GENERATE

02:10PM 16 ACCEPTABLE RANGES ON A PER METHOD BASIS."

02:10PM 17 DO YOU SEE THAT?

02:10PM 18 A. YES.

02:10PM 19 Q. AND THEN YOU WROTE, "YOUR LAB IS COMPARED TO PEER GROUPS

02:11PM 20 ON THE BASIS OF EQUIPMENT."

02:11PM 21 DO YOU SEE THAT?

02:11PM 22 A. YES.

02:11PM 23 Q. AND THAT'S DEALING WITH THAT PEER ISSUE; CORRECT?

02:11PM 24 A. YES.

02:11PM 25 Q. OKAY. AND THEN IN THE PRESENTATION YOU SENT TO

02:11PM 1 MR. BALWANI YOU WROTE, "THERANOS TESTS HAVE NO PEER GROUPS";

02:11PM 2 CORRECT?

02:11PM 3 A. CORRECT.

02:11PM 4 Q. AND THEN THE PRESENTATION CONTINUES.

02:11PM 5 "NORMAL PROCESS OF PT IS THEREFORE NOT APPROPRIATE."

02:11PM 6 DO YOU SEE THAT?

02:11PM 7 A. YES.

02:11PM 8 Q. AND THAT'S WHAT YOU TOLD MR. BALWANI IN THIS PRESENTATION;

02:11PM 9 CORRECT?

02:11PM 10 A. ON -- YES.

02:11PM 11 Q. AND THEN YOU CONTINUED IN YOUR PRESENTATION TO MR. BALWANI

02:11PM 12 ABOUT THE APPROPRIATENESS.

02:11PM 13 "ADDITIONALLY, THE SYNTHETIC MATRIX OF MANY COMMERCIALY

02:11PM 14 AVAILABLE PT SAMPLES IS NOT AN APPROPRIATE ONE FOR MANY

02:11PM 15 THERANOS TESTS."

02:11PM 16 THAT'S WHAT YOU WROTE?

02:11PM 17 A. I WROTE THAT.

02:11PM 18 Q. AND THEN THE NEXT PAGE OF THE PRESENTATION CONTINUES.

02:11PM 19 "HOW IS PT PERFORMED THEN ON THERANOS TESTS?"

02:12PM 20 DO YOU SEE THAT?

02:12PM 21 A. YES.

02:12PM 22 Q. AND THE PRESENTATION CONTINUES, "THE CLSI (THE CLINICAL

02:12PM 23 AND LABORATORY STANDARDS INSTITUTE) ."

02:12PM 24 DO YOU SEE THAT?

02:12PM 25 A. YES.

02:12PM 1 Q. AND WE TALKED ABOUT THAT EARLIER TODAY; CORRECT?

02:12PM 2 A. YES.

02:12PM 3 Q. OKAY. THAT'S THAT THE GUIDELINE IN THE INDUSTRY; CORRECT?

02:12PM 4 A. CORRECT.

02:12PM 5 Q. "REFERS TO THE USE OF AN AAP OR ALTERNATIVE ASSESSMENT

02:12PM 6 PROTOCOL."

02:12PM 7 DO YOU SEE THAT?

02:12PM 8 A. YES.

02:12PM 9 Q. AND IT CONTINUES, YOUR PRESENTATION.

02:12PM 10 "THIS IS AN ALTERNATIVE WAY TO ASSESS THE ONGOING

02:12PM 11 PERFORMANCE OF A LABORATORY TEST WHEN STANDARD PT IS

02:12PM 12 INAPPROPRIATE."

02:12PM 13 DO YOU SEE THAT?

02:12PM 14 A. I SEE IT.

02:12PM 15 Q. AND THAT'S THE PRESENTATION THAT YOU SUBMITTED TO

02:12PM 16 MR. BALWANI; CORRECT?

02:12PM 17 A. YES.

02:12PM 18 Q. AND THEN THE DECK CONTINUES.

02:12PM 19 "PARTICULARLY IMPORTANT FOR LABORATORIES WHO HAVE NO

02:12PM 20 PEERS... SUCH AS US."

02:12PM 21 AGAIN, YOU REPORTED THAT TO MR. BALWANI; CORRECT?

02:12PM 22 A. IT WAS PUT IN THE PRESENTATION HERE.

02:12PM 23 Q. THAT YOU SUBMITTED TO MR. BALWANI?

02:12PM 24 A. CORRECT.

02:12PM 25 Q. AND THE DECK CONTINUES ON THE NEXT PAGE.

02:13PM 1 "OUR AAP."

02:13PM 2 REGARDING "OUR," THAT REFERS TO THERANOS; CORRECT?

02:13PM 3 A. CORRECT.

02:13PM 4 Q. AND THE PRESENTATION YOU SUBMITTED STATES, "INCLUDES

02:13PM 5 COMPARISON OF A PREDICATE FOOD AND DRUG ADMINISTRATION APPROVED

02:13PM 6 METHOD (FOR WHICH THERE IS EXTERNAL ASSESSMENT AVAILABLE) TO

02:13PM 7 THE THERANOS METHODS."

02:13PM 8 DO YOU SEE THAT?

02:13PM 9 A. YES.

02:13PM 10 Q. AND "OUR AAP USES ACTUAL CLINICAL SPECIMENS; 5 OR MORE

02:13PM 11 SPECIMENS ARE TESTED BY PREDICATE, AND BY THE THERANOS METHOD."

02:13PM 12 DO YOU SEE THAT?

02:13PM 13 A. YES.

02:13PM 14 Q. AND THEN THE DESCRIPTION CONTINUES.

02:13PM 15 "INCLUDES MONTHLY (OR GREATER FREQUENCY) PERFORMANCE."

02:13PM 16 DO YOU SEE THAT?

02:13PM 17 A. YES.

02:13PM 18 Q. AND MONTHLY CHECK IS MORE FREQUENT THAN COMMERCIAL PT'S;

02:13PM 19 CORRECT?

02:13PM 20 A. YES.

02:13PM 21 Q. AND THE DECK CONTINUES ON THE NEXT PAGE.

02:14PM 22 "THE THERANOS AAP IS SUPERIOR TO STANDARD PT AND WILL

02:14PM 23 PROVIDE EVEN MORE QUALITY ASSURANCE."

02:14PM 24 DO YOU SEE THAT?

02:14PM 25 A. YES.

02:14PM 1 Q. AND THAT'S PRESENTED IN THE DECK THAT YOU SENT TO
02:14PM 2 MR. BALWANI; CORRECT?
02:14PM 3 A. CORRECT.
02:14PM 4 Q. AND THE DECK NEXT SAYS, "PERFORMED MORE FREQUENTLY (WORKS
02:14PM 5 AS A CANARY IN A COAL MINE, CLOSER TO REALTIME MONITORING) ."
02:14PM 6 DO YOU SEE THAT?
02:14PM 7 A. I DO.
02:14PM 8 Q. AND AGAIN, THIS IS BEING PRESENTED TO MR. BALWANI BY YOU
02:14PM 9 IN THIS PRESENTATION; CORRECT?
02:14PM 10 A. CORRECT.
02:14PM 11 Q. AND THEN THE DECK CONTINUES.
02:14PM 12 "TYPICAL PT DOES NOT PERFORM FOR FREQUENTLY AS A CANARY IN
02:14PM 13 A COAL MINE, CLOSER TO REALTIME MONITORING"; CORRECT?
02:14PM 14 A. CORRECT.
02:14PM 15 Q. AND THEN THERE'S AN IMAGE OF A CANARY IN A COAL MINE NEXT
02:14PM 16 TO THAT.
02:14PM 17 IS THAT WHAT THAT IMAGE IS?
02:14PM 18 A. YEAH, THAT'S WHAT THAT IS.
02:14PM 19 Q. THE DECK CONTINUES.
02:14PM 20 "THE THERANOS AAP IS SUPERIOR TO STANDARD PT AND WILL
02:15PM 21 PROVIDE EVEN MORE QUALITY ASSURANCE," AND THEN IT REFERENCES,
02:15PM 22 "IS PERFORMED USING ACTUAL CLINICAL SPECIMENS."
02:15PM 23 DO YOU SEE THAT?
02:15PM 24 A. YES.
02:15PM 25 Q. SO THIS PLAN WOULD USE ACTUAL SPECIMENS VERSUS

02:15PM 1 MANUFACTURED SPECIMENS?

02:15PM 2 A. YES.

02:15PM 3 Q. OKAY. THEN THE DECK CONTINUES.

02:15PM 4 "ALLOWS CERTAIN VARIABLES TO BE TRACKED THAT MIGHT AFFECT

02:15PM 5 LAB TESTING, WHICH NORMAL PT WOULD NOT ALLOW."

02:15PM 6 DO YOU SEE THAT?

02:15PM 7 A. YES.

02:15PM 8 Q. AND THAT'S THE PRESENTATION THAT YOU SUBMITTED TO

02:15PM 9 MR. BALWANI?

02:15PM 10 A. THAT'S CORRECT.

02:15PM 11 Q. AND THEN THE DECK CONTINUES.

02:15PM 12 "PASSING AN AAP EVENT IS JUST AS RIGOROUS AS PT, IN FACT,

02:15PM 13 IT IS MORE RIGOROUS DUE TO INCREASED FREQUENCY."

02:15PM 14 DO YOU SEE THAT?

02:15PM 15 A. YES.

02:15PM 16 Q. AND THAT IS ALSO PART OF THE PRESENTATION?

02:15PM 17 A. YES.

02:15PM 18 Q. YOU CAN SET THAT ASIDE.

02:16PM 19 DR. PANDORI, IF YOU CAN TAKE A LOOK AT EXHIBIT 20279.

02:16PM 20 20279. IT SHOULD BE IN VOLUME 2.

02:17PM 21 20279.

02:17PM 22 A. OKAY.

02:17PM 23 Q. 20279, THE FIRST PAGE, REFERENCES A MESSAGE TO

02:17PM 24 ADAMROSENDORFF@THERANOS.COM TRANSITION REPORT DATED MAY 30,

02:17PM 25 2014.

02:17PM 1 DO YOU SEE THAT?

02:17PM 2 A. YES.

02:17PM 3 Q. AND THEN THERE'S AN ATTACHMENT REFERENCED ON THAT FIRST

02:17PM 4 PAGE.

02:17PM 5 DO YOU SEE THAT?

02:17PM 6 A. YES.

02:17PM 7 Q. AND THEN THERE'S A SIGNOFF ON THE EMAIL. IT SAYS MARK.

02:17PM 8 DO YOU SEE THAT?

02:17PM 9 A. YES.

02:17PM 10 Q. AND THEN IF YOU TAKE A LOOK AT THE ATTACHMENTS, THERE'S A

02:18PM 11 MEMO AT THE TOP M.W. PANDORI.

02:18PM 12 DO YOU SEE THAT?

02:18PM 13 A. YES.

02:18PM 14 Q. AND THIS IS A MEMO YOU DRAFTED?

02:18PM 15 A. NO, I DON'T RECALL THIS.

02:18PM 16 Q. YOU SENT THE MEMO TO DR. ROSENDORFF?

02:18PM 17 A. NO.

02:18PM 18 Q. THE EMAIL REFLECTS A MESSAGE TO

02:18PM 19 ADAMROSENDORFF@THERANOS.COM.

02:18PM 20 ADAM ROSENDORFF WAS THE LAB DIRECTOR AT THERANOS; CORRECT?

02:18PM 21 A. YES.

02:18PM 22 Q. AND YOU -- YOUR FIRST NAME IS MARK; CORRECT?

02:18PM 23 A. MY FIRST NAME IS MARK.

02:18PM 24 Q. OKAY. MAY 30, 2014 IS THE DATE THAT YOU LEFT THERANOS;

02:18PM 25 CORRECT?

02:18PM 1 A. I DON'T RECALL THAT.

02:18PM 2 Q. YOU LEFT IN LATE MAY 2014?

02:18PM 3 A. I WOULD NEED -- DO YOU HAVE SOMETHING TO REFRESH MY MEMORY

02:18PM 4 IN THAT REGARD?

02:18PM 5 Q. YOU TESTIFIED TODAY THAT YOU LEFT THERANOS IN MAY OF 2014;

02:18PM 6 CORRECT?

02:18PM 7 A. I TESTIFIED THAT IT WAS EARLIER IN MAY I THOUGHT.

02:19PM 8 Q. IN MAY OF 2014?

02:19PM 9 A. IT WAS MAY OF 2014.

02:19PM 10 Q. OKAY. AND YOUR INITIALS ARE M.W. PANDORI?

02:19PM 11 A. YES.

02:19PM 12 Q. AND THE MEMO REFLECTS TOPICS WITHIN THE CLINICAL

02:19PM 13 LABORATORIES SUCH AS HIV, HCG, SMALLER VOLUME PROJECT.

02:19PM 14 DO YOU SEE THAT?

02:19PM 15 A. I SEE IT.

02:19PM 16 Q. OKAY. HIV WOULD REFER TO INFECTIOUS DISEASE; CORRECT?

02:19PM 17 A. HIV -- EXCUSE ME?

02:19PM 18 Q. HIV AND HCG SMALLER VOLUME PROJECT --

02:19PM 19 A. YES.

02:19PM 20 Q. -- WAS AN INFECTIOUS DISEASE PROJECT WITHIN THE

02:19PM 21 LABORATORY; CORRECT?

02:19PM 22 A. I REMEMBER HCG, NOT HIV.

02:19PM 23 Q. OKAY. THE MEMO ON PAGE 3 REFERENCES EMC BUGS.

02:20PM 24 BUGS RELATES TO INFECTIOUS DISEASE AT THERANOS; CORRECT?

02:20PM 25 A. YES.

02:20PM 1 Q. OKAY. AND THE REPORT IS REFLECTING ISSUES IN THE BUGS
02:20PM 2 LAB; CORRECT?

02:20PM 3 A. I DON'T KNOW. I'VE NEVER SEEN THIS REPORT BEFORE.

02:20PM 4 Q. TURNING TO THE LAST PAGE OF THE EXHIBIT, UNDER CBC THERE'S
02:20PM 5 A REFERENCE TO ROMINA AND AURELIE IN THE NORMANDY LAB.
02:20PM 6 DO YOU SEE THAT?

02:20PM 7 ROMINA RIENER AND AURELIE SOUPPE WERE CLINICAL LAB
02:20PM 8 ASSOCIATES AT THERANOS?

02:20PM 9 A. ROMINA AND AURELIE WERE.

02:20PM 10 Q. OKAY. AND UNDER OTHER NOTES THERE'S A DISCUSSION WITHIN
02:20PM 11 THE MEMO REGARDING EDISONS AND ISSUES WITH THE EDISONS.
02:21PM 12 DO YOU SEE THAT?

02:21PM 13 A. I SEE THERE'S SOME ISSUES ON THE EDISONS. I HAVEN'T READ
02:21PM 14 IT.

02:21PM 15 MR. CAZARES: YOUR HONOR, I MOVE TO ADMIT 20279 AS A
02:21PM 16 BUSINESS RECORD.

02:21PM 17 MR. BOSTIC: AUTHENTICATION, YOUR HONOR.

02:21PM 18 THE COURT: SUSTAINED.

02:21PM 19 BY MR. CAZARES:

02:21PM 20 Q. DR. PANDORI, YOU USED EMAIL AT THERANOS; CORRECT?

02:21PM 21 A. CORRECT.

02:21PM 22 Q. AND YOU USED IT TO COMMUNICATE WITH DR. ROSENDORFF?

02:21PM 23 A. YES.

02:21PM 24 Q. ON A ROUTINE BASIS?

02:21PM 25 A. YES.

02:21PM 1 Q. OKAY. AND THE EMAIL ADDRESS IN PAGE 1 OF 20279 IS
02:21PM 2 ADAM ROSENDORFF'S EMAIL ADDRESS AT THERANOS; CORRECT?
02:21PM 3 A. YES.
02:21PM 4 Q. AND WHEN YOU LEFT THERANOS IN LATE 2014, YOU SENT A MEMO
02:21PM 5 TO DR. ROSENDORFF; CORRECT?
02:21PM 6 A. I DON'T RECALL.
02:22PM 7 MR. CAZARES: YOUR HONOR, I REQUEST TO CONDITIONALLY
02:22PM 8 ADMIT THE EXHIBIT GIVEN THAT DR. ROSENDORFF HAS BEEN IDENTIFIED
02:22PM 9 AS A WITNESS WHO WILL BE TESTIFYING SOME TIME NEXT WEEK, WHICH
02:22PM 10 IS WHAT HAS BEEN REPRESENTED TO US, AND WE BELIEVE A FOUNDATION
02:22PM 11 WILL BE ABLE TO BE LAID WITH DR. ROSENDORFF.
02:22PM 12 MR. BOSTIC: SAME OBJECTIONS, YOUR HONOR.
02:22PM 13 THE COURT: I'M GOING TO SUSTAIN THE OBJECTIONS,
02:22PM 14 COUNSEL, FOR THIS. I DO THINK THERE ARE SOME AUTHENTICATION
02:22PM 15 ISSUES THAT DON'T ALLOW ME TO DO THAT AS I'VE DONE IN OTHER
02:22PM 16 EXHIBITS, AND SO I'M GOING TO SUSTAIN THE OBJECTION.
02:22PM 17 MR. CAZARES: YOUR HONOR, MAY I HAVE A MOMENT?
02:22PM 18 THE COURT: SURE.
02:22PM 19 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)
02:23PM 20 BY MR. CAZARES:
02:23PM 21 Q. DR. ROSENDORFF, IF YOU COULD TAKE A LOOK -- I'M SORRY.
02:23PM 22 DR. PANDORI, IF YOU COULD TAKE A LOOK AT THE
02:23PM 23 DOCUMENT 20281 IN YOUR BINDER.
02:23PM 24 A. YES.
02:23PM 25 Q. AND 20281 APPEARS TO BE AN EMAIL CHAIN, THE LATTER -- OR

02:24PM 1 THE EARLIER OF WHICH IS MAY 30, 2014 FROM YOURSELF TO
02:24PM 2 DR. ROSENDORFF.

02:24PM 3 DO YOU SEE THAT?

02:24PM 4 A. YES.

02:24PM 5 Q. AND THE MESSAGE IS "ATTACHED A TRANSITION REPORT. HOPE
02:24PM 6 THIS HELPS."

02:24PM 7 DO YOU SEE THAT?

02:24PM 8 A. I SEE THE EMAIL THAT YOU'RE REFERRING TO.

02:24PM 9 Q. OKAY. AND THAT MESSAGE AT THE BOTTOM OF 20281 IS THE SAME
02:24PM 10 "ATTACHED A TRANSITION REPORT. HOPE THIS HELPS," IN 20279 THAT
02:24PM 11 WE JUST LOOKED AT; CORRECT?

02:24PM 12 A. I DON'T KNOW.

02:24PM 13 Q. THE LANGUAGE IS THE SAME, "ATTACHED A TRANSITION REPORT.
02:24PM 14 HOPE THIS HELPS"?

02:24PM 15 A. I DON'T RECALL.

02:24PM 16 Q. I'M NOT ASKING IF YOU RECALL.

02:24PM 17 I'M ASKING IF THE TEXT IN 20281 AT THE BOTTOM "ATTACHED A
02:24PM 18 TRANSITION REPORT. HOPE THIS HELPS. MARK," IS THE SAME AS
02:24PM 19 WHAT IS REFLECTED IN 20279 ALSO ON MAY 30TH; CORRECT?

02:25PM 20 A. THE EMAIL THAT SAYS, "ATTACHED A TRANSITION REPORT. HOPE
02:25PM 21 THIS HELPS," HAS THE SAME TEXT OF THAT WHICH IS ON PAGE 1 OF
02:25PM 22 EXHIBIT 20279.

02:25PM 23 Q. THANK YOU.

02:25PM 24 CONTINUING WITH 20281, THERE'S A RESPONSE FROM
02:25PM 25 DR. ROSENDORFF TO YOURSELF ON MAY 30TH, 2014.

02:25PM 1 DO YOU SEE THAT?

02:25PM 2 A. YES.

02:25PM 3 Q. "MARK, THANKS FOR SENDING THIS" --

02:25PM 4 THE COURT: EXCUSE ME. THIS HASN'T BEEN ADMITTED.

02:25PM 5 MR. CAZARES: UNDERSTOOD. UNDERSTOOD.

02:25PM 6 Q. THERE APPEARS TO BE A RESPONSE FROM DR. ROSENDORFF TO

02:25PM 7 YOURSELF; CORRECT?

02:25PM 8 A. YES.

02:25PM 9 Q. OKAY. AND CONTINUING ON THERE'S A MESSAGE AT THE TOP WITH

02:25PM 10 THE FROM LINE CUT OFF TO ADAM ROSENDORFF.

02:25PM 11 "SURE, BY ALL MEANS CONTACT ME ANY TIME, ET CETERA"?

02:25PM 12 MR. BOSTIC: YOUR HONOR, THIS REMAINS NOT ADMITTED.

02:25PM 13 MR. CAZARES: UNDERSTOOD.

02:25PM 14 THE COURT: IT HASN'T BEEN ADMITTED.

02:25PM 15 MR. CAZARES: YES, YOUR HONOR.

02:25PM 16 Q. SO THE MESSAGE AT 20281 APPEARS TO BE THE SAME MESSAGE AS

02:25PM 17 IN 20279 WITH RESPONSES FROM DR. ROSENDORFF AND RESPONSES BY

02:26PM 18 YOURSELF TO DR. ROSENDORFF; CORRECT?

02:26PM 19 A. THEY APPEAR TO BE.

02:26PM 20 Q. AND USING EMAIL WAS A METHOD OF COMMUNICATION BETWEEN

02:26PM 21 YOURSELF AND DR. ROSENDORFF ON A REGULAR BASIS?

02:26PM 22 A. YES, WE USED EMAIL ON A REGULAR BASIS.

02:26PM 23 Q. AND AS YOU STATED BEFORE, THOSE EMAILS WERE MAINTAINED BY

02:26PM 24 THE I.T. OR IN THE -- ON THE SERVERS AT THERANOS; CORRECT?

02:26PM 25 A. IT'S WHAT MY UNDERSTANDING IS, YES.

02:26PM 1 MR. CAZARES: MOVE TO ADMIT 20281 AND 20279,
02:26PM 2 YOUR HONOR.
02:26PM 3 MR. BOSTIC: AUTHENTICATION AND HEARSAY.
02:26PM 4 I'LL ALSO POINT OUT THAT DEFENSE EXHIBIT 20281 LACKS A
02:26PM 5 BATES NUMBER, THEREFORE, IT'S NOT COVERED BY OUR STIPULATION.
02:26PM 6 THE COURT: I THINK THERE'S A -- I'LL SUSTAIN THE
02:26PM 7 OBJECTION AS TO 20279, AUTHENTICATION.
02:27PM 8 I'LL ADMIT THE 20281, AND IT MAY BE PUBLISHED.
02:27PM 9 (DEFENDANT'S EXHIBIT 20281 WAS RECEIVED IN EVIDENCE.)
02:27PM 10 MR. CAZARES: IF WE CAN PUBLISH 20281.
02:27PM 11 Q. SO, DR. PANDORI, 20281 ON THE SCREEN, THE MESSAGE IN THE
02:27PM 12 LOWER PORTION DATED MAY 30, 2014.
02:27PM 13 DO YOU SEE THAT?
02:27PM 14 A. I SEE IT.
02:27PM 15 Q. AND THERE'S A MESSAGE THAT APPEARS TO BE FROM YOURSELF TO
02:27PM 16 DR. ROSENDORFF; CORRECT?
02:27PM 17 A. YES.
02:27PM 18 Q. AND IT SAYS TRANSITION REPORT; CORRECT?
02:27PM 19 A. YES.
02:27PM 20 Q. AND THE MESSAGE READS, "ATTACHED A TRANSITION REPORT.
02:27PM 21 HOPE THIS HELPS.
02:27PM 22 "MARK."
02:27PM 23 CORRECT?
02:27PM 24 A. THAT'S WHAT IT SAYS.
02:27PM 25 Q. YOUR NAME IS MARK?

02:27PM 1 A. MY NAME IS MARK.

02:27PM 2 Q. AND YOU USED THERANOS EMAIL WHEN YOU WERE EMPLOYED AT

02:27PM 3 THERANOS; CORRECT?

02:27PM 4 A. CORRECT.

02:27PM 5 Q. AND THE RESPONSE FROM DR. ROSENDORFF TO YOU RE TRANSITION

02:27PM 6 REPORT, MAY 30, 2014 READS, "MARK,

02:27PM 7 "THANKS FOR SENDING THIS. I HAVE ONE OR TWO QUESTIONS AS

02:27PM 8 TIME GOES BY.

02:27PM 9 "GOOD LUCK IN YOUR NEW VENTURES AND HOPE TO KEEP IN TOUCH.

02:27PM 10 "ADAM."

02:28PM 11 DO YOU SEE THAT?

02:28PM 12 A. I SEE THAT.

02:28PM 13 Q. AGAIN, THAT'S DR. ROSENDORFF, THE CLIA LAB DIRECTOR AT

02:28PM 14 THERANOS; CORRECT?

02:28PM 15 A. I ONLY KNOW ONE ADAM ROSENDORFF.

02:28PM 16 Q. OKAY. THE LAST MESSAGE IN THE CHAIN IS A RESPONSE TO

02:28PM 17 ADAM ROSENDORFF:

02:28PM 18 "SURE, BY ALL MEANS CONTACT ME ANY TIME WITH QUESTIONS.

02:28PM 19 "I'M GOING OVER EVERYONES' TIMECARDS RIGHT NOW."

02:28PM 20 DO YOU SEE THAT?

02:28PM 21 A. I SEE THAT.

02:28PM 22 Q. AND YOU SENT A TRANSITION REPORT TO DR. ROSENDORFF ON

02:28PM 23 MAY 30, 2014 AS REFLECTED IN EXHIBIT 20281; CORRECT?

02:28PM 24 A. NO, I DON'T RECALL DOING SO.

02:28PM 25 Q. I'M NOT ASKING IF YOU RECALL IT. I'M ASKING, YOU SENT A

02:28PM 1 TRANSITION REPORT TO DR. ROSENDORFF ON MAY 30, 2014; CORRECT?

02:28PM 2 MR. BOSTIC: ASKED AND ANSWERED.

02:28PM 3 THE COURT: SUSTAINED.

02:29PM 4 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

02:29PM 5 MR. CAZARES: YOUR HONOR, I'VE BEEN REMINDED TO
02:29PM 6 RAISE AN ISSUE REGARDING 20279, AND THE ISSUE RAISED IS THAT IT
02:29PM 7 IS AN EMAIL WITH A BATES RANGE COVERED BY THE STIPULATION OF
02:29PM 8 THE PARTIES.

02:29PM 9 MR. BOSTIC: YOUR HONOR, UNDER THE LANGUAGE OF THAT
02:29PM 10 STIPULATION, THE AUTHENTICATION APPLIES TO THE EMAIL ONLY, NOT
02:29PM 11 TO ANY ATTACHMENTS BEING WHAT THEY APPEAR TO BE, AND THE
02:30PM 12 STIPULATION ALSO, I THINK, SAYS THAT THE EMAILS REFLECT EMAILS
02:30PM 13 SENT TO AND FROM THE INDICATED ADDRESSES.

02:30PM 14 THIS DOCUMENT DOESN'T HAVE AN INDICATED FROM ADDRESS.

02:30PM 15 MR. CAZARES: YOUR HONOR, THE EMAIL HAS CLEARLY
02:30PM 16 DR. ROSENDORFF'S EMAIL ADDRESS, IT CONTAINS THE BATES RANGE
02:30PM 17 STIPULATION OF THE PARTIES, AND IT'S AN EMAIL THAT IS THE
02:30PM 18 SUBJECT TO THE STIPULATION.

02:30PM 19 THE COURT: WHO IS IT FROM?

02:30PM 20 MR. CAZARES: THERE'S AT LEAST ONE PARTY WITHIN THE
02:30PM 21 THERANOS EMAIL SYSTEM, AND DR. ROSENDORFF -- AND DR. PANDORI
02:30PM 22 HAS ACKNOWLEDGED ON THE OTHER EXHIBIT HIS EXCHANGE WITH
02:30PM 23 DR. ROSENDORFF ON THAT SAME DAY IN A FOLLOW-ON MESSAGE.

02:30PM 24 THE RECORD SEEMS TO CLEARLY INDICATE AUTHENTICATION BASED
02:30PM 25 ON THIS CHAIN OF EVENTS WITH THE SUBSEQUENT DOCUMENT 20281.

02:30PM 1 THE COURT: YOU KNOW, WE'LL HAVE THIS DISCUSSION
02:30PM 2 LATER. I SUGGEST YOU REFERENCE THE TIME OF THE EMAIL AS WELL
02:30PM 3 AND THE LACK OF THE SENDER.

02:31PM 4 SO I THINK THERE'S AN AUTHENTICATION ISSUE, SO I'LL
02:31PM 5 SUSTAIN THE OBJECTION FOR NOW.

02:31PM 6 MR. CAZARES: YES, YOUR HONOR.

02:31PM 7 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

02:31PM 8 BY MR. CAZARES:

02:31PM 9 Q. SO, DR. ROSENDORFF, GETTING BACK TO EXHIBIT 20279 --

02:31PM 10 THE COURT: IT'S DR. PANDORI.

02:31PM 11 MR. CAZARES: I HAVE DR. ROSENDORFF ON THE BRAIN,
02:31PM 12 YOUR HONOR.

02:31PM 13 THE COURT: HE'LL BE HERE SOON.

02:31PM 14 (LAUGHTER.)

02:31PM 15 BY MR. CAZARES:

02:31PM 16 Q. DR. PANDORI, 20279, THE EMAIL FROM -- THAT HAS NO SENDER
02:31PM 17 ADDRESSED TO DR. ROSENDORFF.

02:31PM 18 DO YOU SEE THAT?

02:31PM 19 A. I SEE IT.

02:32PM 20 Q. AND IT'S YOUR SWORN TESTIMONY TODAY THAT YOU DID NOT WRITE
02:32PM 21 THE ATTACHMENT TO DR. ROSENDORFF REFLECTED IN EXHIBIT 20279; IS
02:32PM 22 THAT YOUR TESTIMONY?

02:32PM 23 A. I DON'T -- I HAVE TO REVIEW THIS DOCUMENT. I DON'T RECALL
02:32PM 24 AUTHORIZING IT.

02:32PM 25 Q. AND IS IT YOUR TESTIMONY THEN THAT YOU DID NOT WRITE IT?

02:32PM 1 MR. BOSTIC: ASKED AND ANSWERED.

02:32PM 2 THE COURT: SUSTAINED.

02:32PM 3 BY MR. CAZARES:

02:32PM 4 Q. AND IS IT YOUR TESTIMONY TODAY THAT YOU'VE NEVER SEEN IT

02:32PM 5 BEFORE?

02:32PM 6 A. I'M LOOKING AT THIS DOCUMENT, AND I HAVE NO RECOLLECTION

02:32PM 7 OF IT.

02:32PM 8 Q. SO YOU MAY HAVE BOTH WRITTEN IT AND SEEN IT BEFORE?

02:32PM 9 DO YOU AGREE?

02:32PM 10 A. IT'S POSSIBLE.

02:32PM 11 Q. OKAY. YOU CAN SET THAT ASIDE.

02:33PM 12 IF YOU CAN TAKE A LOOK AT EXHIBIT 20454.

02:33PM 13 A. OKAY. I'M THERE.

02:33PM 14 Q. THE FIRST PAGE OF 20254 LOOKS TO BE A JANUARY 29, 2014

02:33PM 15 EMAIL, APPEARS TO BE FROM YOURSELF TO MR. BALWANI?

02:33PM 16 THE COURT: I'M SORRY, THIS IS 2045 --

02:33PM 17 MR. CAZARES: 20254.

02:34PM 18 THE COURT: 202.

02:34PM 19 MR. CAZARES: 20254.

02:34PM 20 THE COURT: DO YOU HAVE THAT EXHIBIT IN FRONT OF

02:34PM 21 YOU, DR. PANDORI?

02:34PM 22 THE WITNESS: YES.

02:34PM 23 THE COURT: OKAY.

02:34PM 24 THE WITNESS: 20254. 20254? OH, WAIT. 20254

02:34PM 25 YOU'RE SAYING?

02:34PM 1 MR. CAZARES: YES, 20254. IT'S IN VOLUME 2.

02:34PM 2 THE COURT: ARE YOU SURE IT'S NOT 20454?

02:34PM 3 MR. CAZARES: NO, 20254.

02:34PM 4 THE WITNESS: I DON'T HAVE THAT.

02:35PM 5 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

02:35PM 6 MR. CAZARES: AGAIN, MY BAD.

02:35PM 7 Q. IT'S AT THE END OF VOLUME 1, 20254.

02:35PM 8 MR. COOPERSMITH: ASK FOR A SIDE-BAR.

02:35PM 9 BY MR. CAZARES:

02:35PM 10 Q. DO YOU HAVE 20254?

02:35PM 11 A. YES.

02:35PM 12 Q. AGAIN, IT APPEARS TO BE AN EMAIL JANUARY 29, 2014?

02:35PM 13 A. YES.

02:35PM 14 Q. AND THE MESSAGE CHAIN APPEARS TO BE BETWEEN YOURSELF AND

02:35PM 15 MR. BALWANI?

02:35PM 16 A. IT DOES.

02:35PM 17 MR. CAZARES: MOVE TO ADMIT 20254, YOUR HONOR.

02:35PM 18 MR. BOSTIC: HEARSAY.

02:35PM 19 BY MR. CAZARES:

02:35PM 20 Q. AND MR. PANDORI -- DR. PANDORI, YOU, AGAIN, REGULARLY USE

02:36PM 21 EMAIL TO COMMUNICATE WITHIN THE CLINICAL LAB AND WITH

02:36PM 22 MANAGEMENT WITHIN THERANOS?

02:36PM 23 A. YES.

02:36PM 24 Q. AND INCLUDING MR. BALWANI?

02:36PM 25 A. YES.

02:36PM 1 Q. REGARDING ISSUES IN THE CLINICAL LAB?

02:36PM 2 A. YES.

02:36PM 3 Q. AND THOSE WERE MAINTAINED AT THERANOS AS FAR AS YOU KNOW
02:36PM 4 AS FAR AS YOU'VE TESTIFIED TODAY?

02:36PM 5 A. YES.

02:36PM 6 MR. CAZARES: MOVE TO ADMIT, YOUR HONOR, BOTH AS A
02:36PM 7 BUSINESS RECORD AND STATE OF MIND OF MR. BALWANI.

02:36PM 8 MR. BOSTIC: YOUR HONOR, SAME OBJECTIONS.

02:36PM 9 THE COURT: STATE OF MIND OF MR. BALWANI?

02:36PM 10 MR. CAZARES: BUSINESS RECORD AND STATE OF MIND.

02:36PM 11 (PAUSE IN PROCEEDINGS.)

02:36PM 12 THE COURT: SO ARE YOU OFFERING THIS FOR THE TRUTH
02:36PM 13 OF THE MATTER ASSERTED OR SOLELY FOR THE ISSUE OF THE STATE OF
02:36PM 14 MIND OF YOUR CLIENT?

02:37PM 15 MR. CAZARES: MY FIRST EXCEPTION IS THAT IT IS A
02:37PM 16 BUSINESS RECORD, YOUR HONOR, AND THE BACKUP IS STATE OF MIND.
02:37PM 17 IT RELATES TO CLINICAL LAB ISSUES.

02:37PM 18 THE COURT: ALL RIGHT. I'LL ADMIT THIS UNDER
02:37PM 19 803(6) .

02:37PM 20 MR. CAZARES: THANK YOU, YOUR HONOR.

02:37PM 21 THE COURT: AND IT MAY BE PUBLISHED.

02:37PM 22 (DEFENDANT'S EXHIBIT 20254 WAS RECEIVED IN EVIDENCE.)

02:37PM 23 BY MR. CAZARES:

02:37PM 24 Q. AND, DR. PANDORI, TURNING TO THE BOTTOM OF THE PAGE ON
02:37PM 25 20254.

02:37PM

1

A. YES.

02:37PM

2

Q. THERE'S A MESSAGE JANUARY 29TH, 2014 FROM MR. BALWANI TO YOU?

02:37PM

3

02:37PM

4

A. OKAY.

02:37PM

5

Q. AND THE MESSAGE FROM MR. BALWANI SAYS, "CAN YOU PLEASE

02:37PM

6

REVIEW ALL SOP'S AND PROCESS IN LIGHT OF OUR DISCUSSION FROM

02:37PM

7

YESTERDAY AND THIS ISSUE WITH THE RESULTS AND 27-HOUR

02:37PM

8

TURN-AROUND TIME -- TO SEE WHAT WE CAN DO TO CREATE A PERFECT

02:37PM

9

EXPERIENCE AND PROCESSES AND RESPONSIBILITIES."

02:37PM

10

DO YOU SEE THAT?

02:37PM

11

A. YES.

02:37PM

12

Q. AND BELOW THAT MR. BALWANI WRITES, "I WOULD LIKE THE

02:37PM

13

PRODUCT MANAGEMENT TEAM 100 PERCENT OUT OF ANY CLIA MATTERS

02:38PM

14

ASAP -- EXCEPT FOR DEMOS."

02:38PM

15

DO YOU SEE THAT?

02:38PM

16

A. YES.

02:38PM

17

Q. AND THE PRODUCT MANAGEMENT TEAM, OR PM'S, ARE SOME OF THE

02:38PM

18

NON-SCIENTIFIC PEOPLE AT THERANOS THAT YOU'VE MENTIONED BEFORE

02:38PM

19

IN YOUR TESTIMONY; CORRECT?

02:38PM

20

A. CORRECT.

02:38PM

21

Q. AND MR. BALWANI IS TELLING YOU THAT HE WOULD LIKE THEM OUT

02:38PM

22

OF CLIA MATTERS ASAP.

02:38PM

23

DO YOU SEE THAT?

02:38PM

24

A. I SEE THAT.

02:38PM

25

Q. AND IN RESPONSE YOU WRITE TO MR. BALWANI, "I WILL BEGIN."

02:38PM 1 DO YOU SEE THAT?

02:38PM 2 A. YES.

02:38PM 3 Q. AND YOU AGREED WITH THAT, THE PROJECT MANAGER SHOULD BE
02:38PM 4 OUT OF CLIA MATTERS; CORRECT?

02:38PM 5 A. I AGREE.

02:38PM 6 Q. AND THEN MR. BALWANI RESPONDS TO YOU THAT, "WE NEED TO
02:38PM 7 CREATE A CULTURE OF RESPONSIBILITY AND OWNERSHIP IN CLIA AND
02:38PM 8 UNTIL THE PM TEAM IS INVOLVED IN BABYSITTING SAMPLES AND
02:38PM 9 PROCESSES, THIS WON'T HAPPEN. THEY CAN HELP WHEN AND WHERE
02:38PM 10 NEEDED AND ASKED BY YOU. BUT THIS SHOULD BE A PROCESS DECISION
02:39PM 11 YOU SHOULD MAKE. THANKS."

02:39PM 12 DO YOU SEE THAT?

02:39PM 13 A. YES.

02:39PM 14 Q. AND SO MR. BALWANI IS ASKING YOU TO TAKE CHARGE AND KEEP
02:39PM 15 THE PM TEAM OUT OF CLIA MATTERS; CORRECT?

02:39PM 16 A. I THINK HE WANTED -- I THINK IT MIGHT BE A LITTLE
02:39PM 17 DIFFERENT.

02:39PM 18 Q. WELL, WHAT HE WROTE WAS, "WE NEED TO CREATE A CULTURE OF
02:39PM 19 RESPONSIBILITY AND OWNERSHIP AND UNTIL THE PM TEAM IS INVOLVED
02:39PM 20 BABYSITTING SAMPLES AND PROCESSES, THIS WON'T HAPPEN."

02:39PM 21 DO YOU SEE THAT PART?

02:39PM 22 A. YES, BUT I DON'T UNDERSTAND THAT SENTENCE.

02:39PM 23 Q. OKAY. "THEY CAN HELP WHEN AND WHERE NEEDED AND ASKED BY
02:39PM 24 YOU."

02:39PM 25 DO YOU SEE THAT?

02:39PM 1 A. YES.

02:39PM 2 Q. AND SO HE'S SAYING THAT THEIR INVOLVEMENT SHOULD ONLY COME

02:39PM 3 AT YOUR REQUEST; CORRECT?

02:39PM 4 A. THEIR HELP?

02:39PM 5 Q. BEING THE PM'S, PRODUCT MANAGEMENT TEAM?

02:39PM 6 A. THEIR HELP, YES.

02:39PM 7 Q. OKAY. AND MR. BALWANI FURTHER STATED, "BUT THIS SHOULD BE

02:39PM 8 A PROCESS DECISION YOU SHOULD MAKE."

02:40PM 9 DO YOU SEE THAT?

02:40PM 10 A. IT SAYS THAT.

02:40PM 11 Q. SO HE'S LEAVING IT TO YOU REGARDING THE INVOLVEMENT OF

02:40PM 12 PRODUCT MANAGEMENT TEAM IN THE CLIA LAB PER THIS EMAIL;

02:40PM 13 CORRECT?

02:40PM 14 A. THAT'S WHAT IT SAYS.

02:40PM 15 MR. CAZARES: YOUR HONOR, WE WOULD REQUEST A

02:40PM 16 SIDE-BAR ON AN ISSUE THAT WE THINK IS IMPORTANT.

02:40PM 17 THE COURT: AT THIS TIME?

02:40PM 18 MR. CAZARES: YES, YOUR HONOR.

02:40PM 19 THE COURT: IS IT SOMETHING THAT YOU -- YOU HAVE

02:40PM 20 20 MINUTES LEFT.

02:40PM 21 MR. CAZARES: I THINK IT'S SOMETHING THAT WE NEED TO

02:40PM 22 ADDRESS, YOUR HONOR.

02:40PM 23 THE COURT: OKAY. ALL RIGHT. WE'LL TAKE A

02:40PM 24 SIDE-BAR.

02:40PM 25 LADIES AND GENTLEMEN, I'M GOING TO SPEAK WITH COUNSEL IN

02:40PM 1 THE BACK HERE, SO WE'LL LEAVE YOU HERE, PLEASE.

02:40PM 2 DO NOT DISCUSS THIS CASE IN ANY WAY AMONGST YOURSELVES.

02:40PM 3 YOU CAN STAND AND STRETCH. YOU CAN'T LEAVE THE COURTROOM,
02:40PM 4 BUT YOU CAN STAND AND STRETCH, AND I'LL BE BACK IN JUST A
02:40PM 5 MOMENT.

02:40PM 6 IS THERE AN EXHIBIT I SHOULD TAKE WITH ME?

02:40PM 7 MR. CAZARES: NO, YOUR HONOR.

02:40PM 8 THE COURT: OKAY.

02:40PM 9 (SIDE-BAR CONFERENCE ON THE RECORD.)

02:44PM 10 THE COURT: THANK YOU. WE'RE AT SIDE-BAR, WHICH IS
02:44PM 11 IN THE JURY ROOM OUTSIDE OF THE PRESENCE OF THE JURY. COUNSEL
02:44PM 12 ARE PRESENT.

02:44PM 13 YOU WANTED TO DISCUSS SOMETHING?

02:44PM 14 MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU FOR
02:44PM 15 THE COURT'S INDULGENCE. I KNOW IT'S ALMOST THE END OF THE DAY.
02:44PM 16 WE REALLY DO APPRECIATE IT.

02:44PM 17 EXHIBIT 2079 AND THE ATTACHMENT --

02:44PM 18 MR. CAZARES: 202.

02:44PM 19 MR. COOPERSMITH: 20279 IS A CRUCIAL EXHIBIT.

02:44PM 20 IT'S MR. PANDORI'S EXIT MEMO, AND WE JUST WANT TO SHOW YOU
02:44PM 21 WHY IT'S ADMISSIBLE, AND IT'S HARD TO DO IT IN FRONT OF THE
02:44PM 22 JURY. AND WE WOULDN'T BE DOING IT IF IT WASN'T AS IMPORTANT AS
02:44PM 23 IT IS IN TERMS OF GETTING THE TRUTH OUT HERE.

02:44PM 24 THE COURT: I'M SORRY, WHAT DID YOU SAY?

02:44PM 25 MR. COOPERSMITH: IN TERMS OF WHAT OUR VIEW OF THE

02:44PM 1 CASE IS.

02:44PM 2 MR. SCHENK: YOUR HONOR, I'M SORRY TO INTERRUPT YOU.

02:44PM 3 JUST TWO QUICK THINGS. THE COURT ASKED IF THE SIDE-BAR
02:44PM 4 WOULD INVOLVE AN EXHIBIT. I THOUGHT THE ANSWER WAS NO, SO WE
02:44PM 5 DIDN'T BRING ANY EXHIBITS WITH US.

02:44PM 6 THE COURT: NOR DID I.

02:44PM 7 MR. SCHENK: THAT'S THE FIRST POINT.

02:44PM 8 THE SECOND IS WHY CAN'T WE DO 20 MORE MINUTES OR 30 MORE
02:44PM 9 MINUTES OF QUESTIONS AND TAKE THIS UP AT THE END OF THE DAY OR
02:44PM 10 MONDAY MORNING. IS NOW REALLY THE RIGHT TIME?

02:44PM 11 MR. COOPERSMITH: I THINK SO. THE REASON I'M IN
02:44PM 12 HERE IS THAT I DO NOT THINK MR. BOSTIC, AND I'M NOT ACCUSING
02:44PM 13 ANYBODY OF ANYTHING, BUT THE STIPULATION DOES NOT SAY WHAT
02:44PM 14 MR. BOSTIC SAYS IT SAYS.

02:44PM 15 THE COURT: CAN I JUST STOP YOU. WE'RE -- IT'S
02:44PM 16 17 MINUTES TO 3:00. OUR DISCUSSION IS GOING TO TAKE MORE THAN
02:44PM 17 17 MINUTES, I'M CONFIDENT OF THAT, JUST BASED ON WHERE WE ARE
02:44PM 18 GOING HERE.

02:44PM 19 I'D LIKE TO MOVE AND DO AS MUCH AS YOU CAN WITH YOUR
02:44PM 20 EXAMINATION. MY SENSE IS THAT YOU HAVE 17 MINUTES WORTH OF
02:44PM 21 QUESTIONS THAT DON'T NECESSARILY NEED TO --

02:44PM 22 MR. COOPERSMITH: WELL, YOU KNOW, MY UNDERSTANDING
02:44PM 23 IS THAT WE WOULD PREFER TO END WITH THIS TOPIC, AND WE DON'T
02:44PM 24 NEED TO GO INTO OTHER THINGS.

02:44PM 25 WE COULD, BUT WE DON'T JUST WANT TO DO THAT FOR THE SAKE

02:44PM 1 OF DOING IT.

02:44PM 2 THE COURT: WELL, THEN LET'S END OUR DAY NOW, AND
02:44PM 3 THEN WE'LL HAVE THE DISCUSSION, AND THEN YOU CAN RAISE IT.

02:44PM 4 MR. COOPERSMITH: OKAY. I THINK THAT WOULD BE FINE.

02:44PM 5 (END OF DISCUSSION AT SIDE-BAR.)

02:44PM 6 THE COURT: ALL RIGHT. THANK YOU. WE'RE BACK ON
02:44PM 7 THE RECORD. ALL COUNSEL ARE PRESENT.

02:44PM 8 DR. PANDORI IS PRESENT.

02:44PM 9 LADIES AND GENTLEMEN, WE NEED TO END THE DAY TODAY. I
02:44PM 10 NEED TO TALK TO THESE LAWYERS A LITTLE BIT, AND IT'S GOING TO
02:44PM 11 EXHAUST THE TIME THAT IS LEFT, WHICH IS ABOUT 15 MINUTES TO
02:44PM 12 3:00.

02:44PM 13 COUNSEL HAS TOLD ME THAT WE NEED TO DISCUSS THIS BEFORE WE
02:44PM 14 MOVE ON TO ANY OTHER QUESTIONS.

02:44PM 15 SO LET ME JUST ASK ABOUT THE WITNESS'S AVAILABILITY
02:44PM 16 TUESDAY.

02:44PM 17 DO WE NEED TO MAKE ANY ADJUSTMENTS ABOUT THAT?

02:44PM 18 MR. BOSTIC: YOUR HONOR, I WOULD DEFER TO
02:45PM 19 DR. PANDORI ON THAT, BUT I UNDERSTAND THAT HE DOES HAVE A
02:45PM 20 SCHEDULING CONFLICT ON THAT.

02:45PM 21 THE COURT: DR. PANDORI, ARE YOU AVAILABLE TUESDAY
02:45PM 22 TO RETURN?

02:45PM 23 THE WITNESS: I'M SCHEDULED TO PARTICIPATE IN A CLIA
02:45PM 24 INSPECTION FOR THE ALAMEDA COUNTY DEPARTMENT OF PUBLIC HEALTH
02:45PM 25 LAB ON THE 5TH OF APRIL, TUESDAY.

02:45PM 1 THE COURT: OKAY. WILL THAT TAKE UP THE ENTIRETY OF
02:45PM 2 YOUR DAY?

02:45PM 3 THE WITNESS: IT'S IN OAKLAND, AND IT WILL TAKE UP
02:45PM 4 APPROXIMATELY FOUR AND A HALF TO FIVE HOURS.

02:45PM 5 THE COURT: SURE. OKAY. ALL RIGHT.

02:45PM 6 SO WE'LL TAKE OUR RECESS NOW, LADIES AND GENTLEMEN. I'M
02:45PM 7 GOING TO TALK WITH THE LAWYERS, AND WE'LL WORK OUT WHAT WE NEED
02:45PM 8 TO DO.

02:45PM 9 WE WILL INFORM YOU ABOUT ANY SCHEDULE CHANGES THAT OCCUR
02:45PM 10 OR THAT WILL OCCUR.

02:45PM 11 WE'RE SCHEDULED TO MEET NEXT WEEK TUESDAY AND WEDNESDAY
02:45PM 12 AND SO WE WILL -- MY ANTICIPATION IS WE WILL BE MEETING THEN
02:46PM 13 AND YOU'LL COME BACK ON THAT DATE, BUT WE'LL INFORM YOU AS TO
02:46PM 14 ANY CHANGES IN THAT SCHEDULE.

02:46PM 15 I DON'T KNOW IF ANY OF YOU HAVE ASKED OR LOOKED TO SEE
02:46PM 16 WHETHER OR NOT NEXT WEEK YOU CAN EXTEND YOUR TIME WITH US UNTIL
02:46PM 17 4:00 O'CLOCK IN THE AFTERNOON. IF THAT'S POSSIBLE, I WOULD ASK
02:46PM 18 US TO DO THAT.

02:46PM 19 IF IT'S NOT, I COMPLETELY UNDERSTAND, AND YOU CAN REPORT
02:46PM 20 TO ME NEXT WEEK ON THAT AS WELL.

02:46PM 21 BEFORE WE BREAK, LET ME GIVE YOU THE ADMONISHMENT AGAIN.

02:46PM 22 PLEASE, DURING OUR BREAK, DO NOT READ, DO ANY INDEPENDENT
02:46PM 23 RESEARCH, HAVE CAUSE TO TALK TO ANYONE, LISTEN, OR DO ANY
02:46PM 24 INDEPENDENT RESEARCH ABOUT THIS CASE, ANYONE INVOLVED WITH IT
02:46PM 25 OR ANYTHING TO DO WITH THIS CASE.

02:46PM 1 HAVE A GREAT WEEKEND. WE'LL SEE YOU NEXT WEEK. THANK
02:46PM 2 YOU.

02:46PM 3 (JURY OUT AT 2:46 P.M.)

02:47PM 4 THE COURT: THANK YOU. PLEASE BE SEATED.

02:47PM 5 DR. PANDORI, CAN YOU STEP OUTSIDE JUST BEFORE YOU LEAVE
02:47PM 6 FOR THE DAY, PLEASE?

02:47PM 7 THE WITNESS: OF COURSE.

02:47PM 8 THE COURT: THANK YOU.

02:47PM 9 (JURY OUT AT 2:47 P.M.)

02:47PM 10 (DR. PANDORI NOT PRESENT.)

02:47PM 11 THE COURT: THE RECORD SHOULD REFLECT THAT THE JURY
02:47PM 12 HAS LEFT FOR THE WEEKEND, AND DR. PANDORI HAS LEFT THE
02:47PM 13 COURTROOM.

02:47PM 14 FIRST, LET'S TALK ABOUT DR. PANDORI'S AVAILABILITY NEXT
02:47PM 15 WEEK. HE HAS TO BE AT HIS LAB, IT SOUNDS LIKE, FOR A CLIA
02:48PM 16 INSPECTION.

02:48PM 17 DOES THE GOVERNMENT HAVE A THOUGHT ABOUT WHAT WE WOULD DO
02:48PM 18 IF THE COURT WERE TO ALLOW HIM TO PARTICIPATE IN HIS JOB
02:48PM 19 FUNCTION?

02:48PM 20 MR. BOSTIC: YES, YOUR HONOR.

02:48PM 21 OUR SUGGESTION WOULD BE TO CAPITALIZE ON THE DAY WHEN THE
02:48PM 22 JURY IS AVAILABLE TO PUT ANOTHER WITNESS ON THE STAND AND TAKE
02:48PM 23 WITNESSES OUT OF ORDER.

02:48PM 24 I BELIEVE WE HAD A WITNESS IDENTIFIED WHO WE CAN COMPLETE
02:48PM 25 THE DIRECT AND CROSS OF WITHIN THE DAY ON TUESDAY, AND THEN WE

02:48PM 1 COULD RESUME WITH DR. PANDORI ON WEDNESDAY WHEN HE BECOMES
02:48PM 2 AVAILABLE AGAIN.

02:48PM 3 THE COURT: OKAY. ALL RIGHT.

02:48PM 4 MR. COOPERSMITH.

02:48PM 5 MR. COOPERSMITH: YES, YOUR HONOR.

02:48PM 6 YOU KNOW, WE DON'T WANT TO DISRUPT -- SORRY --

02:48PM 7 DR. PANDORI'S SCHEDULE, AND I THINK WE CAN TAKE HIM OUT OF
02:48PM 8 ORDER, AND HE'LL COME BACK WHEN HE'S ABLE TO COME BACK.

02:48PM 9 THE COURT: OKAY. THANK YOU.

02:48PM 10 THEN WHY DON'T WE -- SHOULD WE TELL HIM THAT HE SHOULD
02:48PM 11 COME BACK ON WEDNESDAY AT 9:00 A.M. THEN?

02:48PM 12 MR. COOPERSMITH: THAT SUITS THE DEFENSE,
02:48PM 13 YOUR HONOR.

02:49PM 14 THE COURT: DOES THAT WORK?

02:49PM 15 MR. BOSTIC: YES, YOUR HONOR.

02:49PM 16 THE COURT: CAN SOMEONE ASK HIM TO COME IN? WE'LL
02:49PM 17 LET HIM LEAVE NOW.

02:50PM 18 (PAUSE IN PROCEEDINGS.)

02:50PM 19 (DR. PANDORI PRESENT.)

02:50PM 20 THE COURT: DR. PANDORI, GOOD AFTERNOON.

02:50PM 21 SIR, I UNDERSTAND YOU HAVE THIS LAB COMMITMENT ON TUESDAY.

02:50PM 22 I'VE TALKED WITH THE LAWYERS, AND THEY HAVE AGREED TO ALLOW

02:50PM 23 YOU, AND I'LL CERTAINLY PERMIT YOU, TO NOT TO HAVE TO COME BACK

02:50PM 24 ON TUESDAY, BUT IF YOU COULD COME BACK ON WEDNESDAY AT

02:51PM 25 9:00 A.M. BE AVAILABLE FOR TESTIMONY ON WEDNESDAY AT 9:00 A.M.

02:51PM 1 WILL THAT WORK FOR YOU, SIR?

02:51PM 2 THE WITNESS: YES.

02:51PM 3 THE COURT: ALL RIGHT. IF YOU'LL COME BACK ON
02:51PM 4 WEDNESDAY, WEDNESDAY NEXT AT 9:00 A.M., WE'LL CONTINUE WITH
02:51PM 5 YOUR EXAMINATION.

02:51PM 6 THE WITNESS: THANK YOU.

02:51PM 7 THE COURT: YOU'RE WELCOME.

02:51PM 8 ALL RIGHT. THE RECORD SHOULD REFLECT --

02:51PM 9 THE WITNESS: SORRY.

02:51PM 10 THE COURT: YOU CAN GO. YOU CAN GO, DR. PANDORI.
02:51PM 11 THAT'S FINE.

02:51PM 12 THE RECORD SHOULD REFLECT THAT DR. PANDORI HAS LEFT THE
02:51PM 13 COURTROOM. THE JURY HAS GONE FOR THE WEEKEND.

02:51PM 14 WE HAD A SIDE-BAR DISCUSSION AT COUNSEL'S REQUEST, BUT THE
02:51PM 15 REQUEST WAS TO TALK ABOUT SOMETHING. I ASKED WHETHER I SHOULD
02:51PM 16 BRING DOCUMENTS BACK. I WAS TOLD NO. WE STARTED THAT
02:51PM 17 CONVERSATION, AND APPARENTLY IT WAS ABOUT 20281, I THINK.

02:52PM 18 I THINK, MR. COOPERSMITH, YOU SUGGESTED THAT IT WAS
02:52PM 19 IMPORTANT THAT WE DISCUSS THIS WITH 17 MINUTES BEFORE WE CLOSE
02:52PM 20 BECAUSE YOU WANTED TO END THE DAY -- YOU WANTED TO CURATE YOUR
02:52PM 21 DEFENSE IN A WAY THAT THE JURY WAS LEFT WITH THIS
02:52PM 22 DOCUMENT/EXAMINATION FRESH IN THEIR MINDS.

02:52PM 23 MR. COOPERSMITH: I THINK THAT'S FAIR, YOUR HONOR.

02:52PM 24 AND WE DO APPRECIATE THE COURT'S INDULGENCE ON THE
02:52PM 25 SIDE-BAR. AND IF THERE WAS A MISUNDERSTANDING WITH THE

02:52PM 1 DOCUMENTS, I DO APOLOGIZE, BUT WE DID WANT TO CLEAR THIS UP,
02:52PM 2 AND PERHAPS WE CAN DO THAT RIGHT NOW WITH THE FEW MINUTES WE
02:52PM 3 HAVE UNTIL 3:00.

02:52PM 4 THE COURT: SURE.

02:52PM 5 SO WHAT WOULD YOU LIKE ME TO KNOW?

02:52PM 6 MR. COOPERSMITH: WELL, IF I COULD APPROACH,
02:52PM 7 YOUR HONOR, AND HAND YOU THE STIPULATION THAT IS AT ISSUE.

02:52PM 8 IT IS HARD TO TYPE WHILE YOU'RE ALSO HANDING THINGS UP.

02:53PM 9 THE COURT: OKAY. YOU'VE HANDED ME A DOCUMENT THAT
02:53PM 10 LOOKS LIKE IT'S FOUR PAGES. IT'S TITLED STIPULATION REGARDING
02:53PM 11 CERTAIN EXHIBITS.

02:53PM 12 MR. COOPERSMITH: YES, YOUR HONOR.

02:53PM 13 THIS IS A STIPULATION THAT THE PARTIES REACHED BEFORE
02:53PM 14 TRIAL, AND IT WAS FILED WITH THE COURT.

02:53PM 15 AND THE APPLICABLE PARAGRAPH IS, IF YOU TURN TO THE PAGE
02:53PM 16 AFTER THE COVER PAGE, IT'S LABELLED PAGE 1, IT'S PARAGRAPH
02:53PM 17 NUMBER 2.

02:53PM 18 I'M LOOKING AT THAT PARAGRAPH IN REFERENCE TO THE EXHIBIT.
02:53PM 19 IT MIGHT BE GOOD TO HAVE IT IN FRONT OF YOU, AND IT'S THAT
02:53PM 20 EXHIBIT 20279. IT'S THE EXHIBIT THAT WAS ON THE TOP, THE EMAIL
02:53PM 21 FROM DR. PANDORI TO DR. ROSENDORFF ON MAY 30TH, 2014. THERE'S
02:53PM 22 A BATES NUMBER AT THE VERY BOTTOM CORNER.

02:53PM 23 I'LL JUST NOTE TO START THAT THE BATES NUMBER IS A THPFM
02:54PM 24 BATES DOCUMENT. SO THAT'S ONE OF THE BATES NUMBER ON THE
02:54PM 25 DOCUMENT.

02:54PM 1 IF YOU LOOK AT PARAGRAPH 2, THAT IS THE TYPE OF SERIES
02:54PM 2 AMONG THE DIFFERENT BATES NUMBER SERIES THAT IS STIPULATED TO
02:54PM 3 AS AUTHENTIC.

02:54PM 4 THE OTHER THING I WANTED TO POINT OUT, YOUR HONOR, AND I'M
02:54PM 5 NOT CASTING ANY ASPERSIONS ON THE GOVERNMENT, AND WE'RE IN THE
02:54PM 6 MIDDLE OF THE TRIAL AND THEY CAN'T HAVE THE STIPULATION IN
02:54PM 7 FRONT OF THEM NECESSARILY, BUT WHAT IT ACTUALLY SAYS IS,
02:54PM 8 "EMAILS TO OR FROM EMAIL ADDRESSES WITH THE DOMAIN THERANOS,
02:54PM 9 DOMAIN @THERANOS.COM THAT WAS SENT OR RECEIVED."

02:54PM 10 AND IF YOU LOOK AT THE EMAIL THAT IS AT ISSUE,
02:54PM 11 EXHIBIT 20279, EXHIBIT 20279, THAT IS THE EMAIL WITH THE
02:54PM 12 CORRECT BATES NUMBER THAT IS LISTED IN THE STIPULATION, AND IT
02:54PM 13 IS AN EMAIL IN FACT TO DR. ROSENDORFF AT THAT EXACT SAME
02:55PM 14 DOMAIN, AROSENDORFF@THERANOS.COM.

02:55PM 15 SO IT IS TRUE THAT THERE'S NO EMAIL IDENTIFIED IN THE FROM
02:55PM 16 FIELD, DR. PANDORI, BUT THE STIPULATION DOESN'T REQUIRE THAT
02:55PM 17 BECAUSE OF THE DISJUNCTIVE IN BOTH SECTIONS OR, TO OR FROM,
02:55PM 18 SENT OR RECEIVED.

02:55PM 19 SO WE THINK THIS 100 PERCENT CLEARLY FALLS WITHIN THE
02:55PM 20 STIPULATION AS AUTHENTIC. THAT WAS THE OBJECTION.

02:55PM 21 AND THEN I WOULD ALSO NOTE, YOUR HONOR, TO GO A LITTLE
02:55PM 22 FURTHER, THAT DOESN'T NECESSARILY INCLUDE THE ATTACHMENT.
02:55PM 23 THERE WAS ANOTHER OBJECTION THAT MR. BOSTIC MADE THAT THE
02:55PM 24 STIPULATION DOESN'T INCLUDE ATTACHMENTS.

02:55PM 25 NOW, OF COURSE I HAVE TO AGREE THAT THE LANGUAGE IN THE

02:55PM 1 STIPULATION DOESN'T MENTION THE WORD "ATTACHMENT," BUT I WOULD
02:55PM 2 NOTE THAT THE EMAIL ITSELF, LIKE THE EMAILS DO WHEN THEY HAVE A
02:55PM 3 FILE ATTACHED, HAS TRANSITION MWP 052014 DOCX, INDICATING A
02:56PM 4 WORD DOCUMENT ATTACHMENT, WHICH ALSO THE ATTACHMENT WHICH ALSO
02:56PM 5 HAS THE BATES NUMBER SERIES, WHICH ARE SEQUENTIAL.

02:56PM 6 SO AT A MINIMUM, I THINK THE EMAIL WOULD COME IN UNDER
02:56PM 7 STIPULATION.

02:56PM 8 THE ATTACHMENT, YOU KNOW, MR. BOSTIC MAY MAKE A SLIGHTLY
02:56PM 9 BETTER POINT THAT THE STIPULATION DOESN'T SAY ATTACHMENTS, BUT
02:56PM 10 I THINK THAT COMES FROM THE CONTENT OF THE EMAIL ITSELF.

02:56PM 11 SO I JUST WANTED TO MAKE SURE THAT THAT WAS CLEAR, YOU
02:56PM 12 KNOW, BEFORE WE LEFT THIS WITNESS WHO I UNDERSTAND IS COMING
02:56PM 13 BACK WEDNESDAY.

02:56PM 14 THE COURT: SO ONE OF THE PROBLEMS -- I ASKED YOU
02:56PM 15 ABOUT TIME. YOUR COLLEAGUE WAS TALKING ABOUT WAS THIS THE DAY
02:56PM 16 HE LEFT? WE'LL ALL LOOK AT THE TRANSCRIPT AGAIN THIS EVENING.
02:56PM 17 I THINK HE SAID WAS IT CLOSE TO HIS BIRTHDAY, MAY 19TH, THAT HE
02:56PM 18 HAD THE CONVERSATION WITH YOUR CLIENT AND MS. HOLMES, AND THEN
02:56PM 19 HE SAID, I DECIDED -- IT SOUNDS LIKE HE DECIDED TO -- MADE THE
02:56PM 20 DECISION IN THEIR OFFICE TO RESIGN THAT DATE. HE TOLD US HIS
02:57PM 21 BIRTHDAY WAS THE 19TH OF MAY AND THAT INTERVIEW WAS SOME TIME
02:57PM 22 AROUND THEN.

02:57PM 23 THE EMAIL THAT WAS REFERENCED IN THE OTHER DOCUMENT, WAS
02:57PM 24 THAT -- I THINK WAS THAT AT -- EXCUSE ME, MAY 30TH, BUT IT WAS
02:57PM 25 SOME TIME AROUND NOON, WAS IT?

02:57PM 1 MR. COOPERSMITH: YES, YOUR HONOR.

02:57PM 2 THE COURT: AND THIS IS SENT AROUND 7:29 P.M.?

02:57PM 3 MR. COOPERSMITH: THAT IS THE TIME, ALTHOUGH

02:57PM 4 SOMETIMES THESE TIMES ARE NOT RELIABLE BECAUSE THEY'RE

02:57PM 5 SOMETIMES IN UTC TIMES.

02:57PM 6 THE COURT: WHICH SUGGESTS THE RELIABILITY AND

02:57PM 7 AUTHENTICATION ISSUE THAT I WAS TALKING ABOUT.

02:57PM 8 MR. COOPERSMITH: NO, I DON'T THINK SO, YOUR HONOR.

02:57PM 9 TWO POINTS. FIRST, ON THE TESTIMONY, AND I DO RECALL THE

02:57PM 10 SAME TESTIMONY THAT DR. PANDORI SAID THAT HE REMEMBERS HIS

02:57PM 11 BIRTHDAY. I THINK HE SAID IT WAS MAY 19TH. AND THEN HE

02:57PM 12 REMEMBERS RESIGNING WITHIN MINUTES, SOMETHING TO THAT EFFECT.

02:57PM 13 IF NECESSARY, WE COULD SHOW THAT HE ACTUALLY HAD A

02:57PM 14 TRANSITION PERIOD AND HE DIDN'T WALK OUT OF THE BUILDING OR

02:57PM 15 ANYTHING LIKE THAT AND THEN WHICH WOULD SET UP HIM DOING THIS

02:58PM 16 EMAIL.

02:58PM 17 BUT IN ANY EVENT, YOUR HONOR --

02:58PM 18 THE COURT: MAYBE WE SHOULD DO THAT. WE'LL DO THAT.

02:58PM 19 MR. COOPERSMITH: WELL, WE CERTAINLY CAN.

02:58PM 20 BUT WHAT WE WERE HOPING TO RELY ON, AND I'M TRYING TO

02:58PM 21 POINT OUT TO THE COURT I THINK WE'RE ENTITLED TO RELY ON, IS

02:58PM 22 THAT REGARDLESS OF WHAT THE COURT THINKS OR THE WITNESS MAY SAY

02:58PM 23 ABOUT THIS DOCUMENT, HE CAN DENY ABSOLUTELY, HE'S FREE TO DENY

02:58PM 24 THAT HE EVER SAW THIS OR SENT THIS, HE CAN TESTIFY THAT WAY IF

02:58PM 25 HE SO CHOOSES.

02:58PM 1 THE COURT: WELL, HE DID. WE HAVE HIS TESTIMONY ON
02:58PM 2 THIS. HE SAID THAT HE DIDN'T RECOLLECT, THAT HE'S NEVER SEEN
02:58PM 3 IT BEFORE, THAT LINE OF RESPONSE.

02:58PM 4 MR. COOPERSMITH: HE'S FREE TO SAY THAT, YOUR HONOR.

02:58PM 5 BUT HE'S ALSO FREE TO SAY THAT WITH THE EMAIL IN EVIDENCE
02:58PM 6 BECAUSE IT IS PART OF THE STIPULATION. IT IS A STIPULATED
02:58PM 7 AUTHENTIC EMAIL AS AUTHENTICALLY COMING FROM, IN THIS CASE TO
02:58PM 8 DR. ROSENDORFF, AND IT'S PART OF THE STIPULATION.

02:58PM 9 THERE'S REALLY NO QUESTION, GIVEN THE LANGUAGE OF THE
02:58PM 10 STIPULATION. AND IF IT COMES INTO EVIDENCE AND THE JURY SEES
02:58PM 11 IT AND IF HE WANTS TO DENY ON THE STAND --

02:58PM 12 THE COURT: WELL, YOU SAID HE'S ENTITLED TO SAY, AND
02:59PM 13 THEN YOU SAID ALL OF THESE OTHER THINGS.

02:59PM 14 ENTITLED TO SAY WHAT?

02:59PM 15 MR. COOPERSMITH: WITH THE EXHIBIT IN FRONT OF HIM
02:59PM 16 HE'S ENTITLED TO SAY THAT HE NEVER SENT THIS. IF THAT'S WHAT
02:59PM 17 HE WANTS TO TESTIFY UNDER OATH, HE'S FREE TO DO THAT.

02:59PM 18 AND HE'S ALSO FREE TO TESTIFY THAT I DIDN'T SEND THE
02:59PM 19 ATTACHMENT OR WRITE IT, AND WE'LL DEAL WITH THAT WITH OTHER
02:59PM 20 WITNESSES IF THAT'S WHAT HE WANTS TO SAY UNDER OATH.

02:59PM 21 THE COURT: HAS HE SAID THAT ALREADY?

02:59PM 22 MR. COOPERSMITH: WELL, WHAT HE ACTUALLY SAID AT THE
02:59PM 23 END IS HE MIGHT HAVE TO REVIEW THE DOCUMENT, HE DOESN'T RECALL.
02:59PM 24 SO MAYBE HE'S HEDGING A LITTLE BIT.

02:59PM 25 THE COURT: WELL, YOUR COLLEAGUE ASKED HIM ON CROSS,

02:59PM 1 RIGHT? WELL, YOU DON'T REMEMBER. THAT MEANS MAYBE YOU COULD
02:59PM 2 HAVE SENT IT, MAYBE YOU DID OR MAYBE YOU DIDN'T.

02:59PM 3 MR. COOPERSMITH: RIGHT. YOUR HONOR, AT THIS POINT
02:59PM 4 THE ONLY THING -- YES, HE CAN SAY WHAT HE WANTS ON THE STAND,
02:59PM 5 WE DON'T CONTROL WHAT A WITNESS SAYS ON THE STAND OBVIOUSLY.

02:59PM 6 BUT WHAT I THINK IS CLEAR IS THAT HE CAN DO SO WITH THE
02:59PM 7 DOCUMENT PUBLISHED IN EVIDENCE BECAUSE IT IS PART OF THE
02:59PM 8 STIPULATION, AND THAT'S ALL WE WERE ASKING AND WE'RE NOT
02:59PM 9 TRYING --

02:59PM 10 THE COURT: OKAY. SO YOU'RE SEEKING AN ADMISSION
02:59PM 11 THROUGH A STIPULATION. AND YOU'RE TELLING ME THAT EVEN IF I
03:00PM 12 SAY NO TO THAT, YOU'RE GOING TO GET THIS IN THROUGH SOMEBODY
03:00PM 13 ELSE? YOU MIGHT GET IT IN THROUGH DR. ROSENDORFF OR WHAT
03:00PM 14 YOU'RE TELLING ME IS THAT YOU HAVE ANOTHER WAY OF GETTING THIS
03:00PM 15 IN?

03:00PM 16 MR. COOPERSMITH: WELL, YOU KNOW, I THINK WE DO,
03:00PM 17 YOUR HONOR.

03:00PM 18 THE COURT: UH-HUH.

03:00PM 19 MR. COOPERSMITH: BUT I THINK WE'RE ENTITLED TO PUT
03:00PM 20 ON A CROSS THAT WE WANT TO PUT ON AND IF IT'S WITHIN THE RULES
03:00PM 21 AND THE STIPULATION.

03:00PM 22 AND IF WE HAVE A WITNESS ON THE STAND WHO WE THINK THIS IS
03:00PM 23 EFFECTIVE WITH, AND WE HAVE A STIPULATION THAT THE DOCUMENT IS
03:00PM 24 AUTHENTIC, THEN I THINK WE SHOULD BE ABLE TO TRY THE CASE AS WE
03:00PM 25 WISH, AGAIN, WITHIN THE RULES AND WITHIN THE STIPULATION AND

03:00PM 1 BASED ON THE ORDERS OF THE COURT.

03:00PM 2 BUT MR. BOSTIC -- AND THE REASON I WANTED TO BRING THIS UP
03:00PM 3 IS, BECAUSE, AGAIN, I'M NOT ACCUSING ANYONE OF ANYTHING, BUT
03:00PM 4 MR. BOSTIC SAID IT'S NOT COVERED BY THE STIPULATION BECAUSE IT
03:00PM 5 DIDN'T HAVE THE, YOU KNOW, THE FROM EMAIL ADDRESS ON THE
03:00PM 6 EXHIBIT, WHICH IS 20279, BUT THAT'S NOT REQUIRED BY THE
03:00PM 7 STIPULATION.

03:00PM 8 AND SO I THINK IT'S ADMISSIBLE UNDER THE STIPULATION, AND
03:00PM 9 I THINK IT COMES IN, AND THEN AS I SAID, DR. PANDORI CAN SAY
03:00PM 10 WHATEVER HE WANTS.

03:01PM 11 THE COURT: OKAY. SURE.

03:01PM 12 LET ME JUST SAY, WHY DID WE WASTE THE TIME? THIS TRIAL --
03:01PM 13 WE'RE REALLY HAVING FITS AND STARTS IN THIS, AND I'M CONCERNED
03:01PM 14 ABOUT OTHER ISSUES COMING UP, AND I THINK WE'RE GOING TO HEAR
03:01PM 15 ABOUT ONE IN A MOMENT FROM A JUROR ABOUT POTENTIAL TRAVEL
03:01PM 16 ISSUES.

03:01PM 17 BUT HONESTLY, WE HAD 17 MINUTES AND SURELY, SURELY YOU
03:01PM 18 COULD HAVE TOUCHED ON ANOTHER SUBJECT AND THEN COME BACK TO
03:01PM 19 THIS. YOU'LL HAVE ANOTHER OPPORTUNITY.

03:01PM 20 AND I UNDERSTAND YOU WOULD LIKE TO CURATE YOUR PART OF THE
03:01PM 21 CASE AS MUCH AS YOU CAN, BUT THAT'S FINE. WE WENT BACK AND WE
03:01PM 22 LOST, YOU KNOW, 17 MINUTES OF TESTIMONY. IN THE GRAND SCHEME
03:01PM 23 OF THINGS THAT DOESN'T SOUND LIKE A BIG DEAL, BUT IN A CASE OF
03:01PM 24 THIS DURATION WHEN WE'RE HAVING TROUBLE, WE'RE PARING OUT OUR
03:01PM 25 DAYS, 17 MINUTES IS A LIFETIME IN THE TRIAL.

03:01PM 1 I JUST WANT TO ASK COUNSEL, EVERYONE TO PLEASE BE
03:01PM 2 COGNIZANT OF THAT. I'M NOT GOING TO INTERRUPT AND STOP YOU
03:01PM 3 FROM DOING WHAT YOU NEED TO DO, BUT I THINK A BIG PICTURE LOOK
03:02PM 4 AT WHERE AM I, WHAT AM I DOING, WHAT DO I SEEK TO BE
03:02PM 5 ACCOMPLISHED WOULD BE HELPFUL FOR ALL OF US AND FOR THE JURY AS
03:02PM 6 WELL.

03:02PM 7 THIS JURY WAS -- YOU KNOW, I HAD TO SEND THEM HOME EARLY.
03:02PM 8 IT'S UNFORTUNATE.

03:02PM 9 MR. BOSTIC.

03:02PM 10 MR. COOPERSMITH: YOUR HONOR, JUST LET ME SAY ONE
03:02PM 11 MORE THING ABOUT THAT, AND OF COURSE MR. BOSTIC CAN RESPOND.

03:02PM 12 I DO TAKE THE COURT'S COMMENTS TO HEART. WE DON'T WANT TO
03:02PM 13 WASTE TIME. NOTHING LIKE THAT.

03:02PM 14 BUT I JUST WANT TO POINT OUT THAT IF THE STIPULATION HAD
03:02PM 15 BEEN RECITED ACCURATELY AT THE TIME, I THINK WE COULD HAVE
03:02PM 16 CLEARED THIS UP IN ABOUT 30 SECONDS AS OPPOSED TO 17 MINUTES.
03:02PM 17 SO THAT WAS --

03:02PM 18 THE COURT: MR. BOSTIC.

03:02PM 19 MR. BOSTIC: AND THAT IS NOT TRUE AS I'LL EXPLAIN
03:02PM 20 BRIEFLY.

03:02PM 21 I WILL CONCEDE, THOUGH, THAT WITH THE LANGUAGE OF THE
03:02PM 22 STIPULATION IN FRONT OF ME, I DON'T BELIEVE THAT THE LACK OF A
03:02PM 23 FROM ADDRESS ON THIS DOCUMENT IS THE CHIEF REASON WHY IT'S NOT
03:02PM 24 ADMISSIBLE.

03:02PM 25 I THINK IT DOES STILL HAVE AN AUTHENTICITY PROBLEM BECAUSE

03:02PM 1 THE DEFENSE IS NOT SEEKING JUST TO ADMIT THE EMAIL, BUT ALSO
03:02PM 2 THE ATTACHED DOCUMENT.

03:02PM 3 AND THE STIPULATION COVERS THE EMAIL ITSELF BUT DOES NOT
03:03PM 4 SAY THAT THE ATTACHED DOCUMENTS ARE WHAT THEY APPEAR TO BE.

03:03PM 5 I THINK THE MORE IMPORTANT ISSUE IS THE HEARSAY PROBLEM,
03:03PM 6 AND I THINK WHEN WE ARE TALKING ABOUT THE ATTACHMENT AND THE
03:03PM 7 MEMORANDUM, I DON'T THINK ANY FOUNDATION HAS BEEN LAID THAT
03:03PM 8 THIS IS A BUSINESS RECORD.

03:03PM 9 THE WITNESS HAS TESTIFIED THAT HE HAS NO RECOLLECTION OF
03:03PM 10 SEEING OR PREPARING THIS DOCUMENT.

03:03PM 11 I THINK HIS TESTIMONY WAS CONSISTENT ON THAT. I THINK
03:03PM 12 THAT'S THE ONLY ANSWER THAT HE GAVE TO THAT QUESTION.

03:03PM 13 AND I THINK THAT ANSWER MAKES IT IMPOSSIBLE TO LAY A
03:03PM 14 FOUNDATION THAT THE ATTACHMENT TO 20279 IS A BUSINESS RECORD OR
03:03PM 15 FALLS UNDER ANY OTHER APPLICABLE EXCEPTION TO THE HEARSAY RULE.

03:03PM 16 SO I DON'T THINK THAT THIS DOCUMENT IS ADMISSIBLE BASED ON
03:03PM 17 THE CURRENT RECORD.

03:03PM 18 I, OF COURSE, DID NOT ANTICIPATE THAT THE DEFENSE WOULD
03:03PM 19 SEEK TO ADMIT IT OR THAT THE WITNESS WOULD NOT REMEMBER IT, BUT
03:04PM 20 WE ARE WHERE WE ARE.

03:04PM 21 MR. COOPERSMITH: YOUR HONOR, TWO BRIEF THINGS.

03:04PM 22 FIRST OF ALL, PUTTING ASIDE THE ATTACHMENT FOR THE MOMENT,
03:04PM 23 IT SOUNDS LIKE MR. BOSTIC IS CONCEDED --

03:04PM 24 THE COURT: SO LET'S -- PARDON ME FOR INTERRUPTING
03:04PM 25 YOU. PAGE 1 COMES IN. LET'S TALK ABOUT THE ATTACHMENT.

03:04PM 1 MR. COOPERSMITH: YES, YOUR HONOR. AGREED.

03:04PM 2 SO LET'S TALK ABOUT THE ATTACHMENT.

03:04PM 3 SO IN DIRECT EXAMINATION MR. BOSTIC WAS ALLOWED TO PUT IN
03:04PM 4 AN ARTICLE FROM "THE WALL STREET JOURNAL," AS I RECALL, AND THE
03:04PM 5 RATIONALE OF ITS ADMISSIBILITY WAS TO INFORM -- BECAUSE THE
03:04PM 6 WITNESS TESTIFIED THAT HE HAD READ CERTAIN ARTICLES, AND HE WAS
03:04PM 7 EXCITED ABOUT THERANOS, AND THAT'S ONE REASON HE WANTED TO JOIN
03:04PM 8 THE COMPANY. AND IT WAS ALLOWED TO SORT OF INFORM HIS WAY OF
03:04PM 9 PERCEIVING, WHICH IN THAT CASE WAS TO JOIN THERANOS.

03:04PM 10 WHAT THIS IS, IS THE TAIL END OF THAT. THIS IS WHERE
03:04PM 11 DR. PANDORI IS LEAVING AND HE'S WRITING A TRANSITION MEMO, AND
03:04PM 12 HE'S SAYING HERE'S ALL OF THE THINGS THAT YOU SHOULD KNOW,
03:04PM 13 RIGHT? AND THERE ARE SOME THINGS THAT WE WOULD WISH TO EXAMINE
03:05PM 14 HIM ABOUT. AND THIS IS INFORMING, LIKE, THE ISSUE OF WHY HE
03:05PM 15 LEFT.

03:05PM 16 AND THE GOVERNMENT IN THEIR DIRECT EXAMINATION, AND THIS
03:05PM 17 IS FRONT AND CENTER IN THEIR DIRECT EXAMINATION, THEY PUT AT
03:05PM 18 ISSUE WHY DID DR. PANDORI LEAVE? WHAT WAS THE REASONS -- WHAT
03:05PM 19 WAS IMPORTANT TO HIM?

03:05PM 20 AND HE TESTIFIED THAT HE HAD VARIOUS PROBLEMS AND ISSUES
03:05PM 21 WITH THERANOS, INCLUDING MR. BALWANI, AND THIS DROVE HIM TO
03:05PM 22 QUIT AND HE SAID IN MINUTES HE DECIDED.

03:05PM 23 ONCE THEY DO THAT, I THINK WE SHOULD BE ENTITLED TO
03:05PM 24 EXPLAIN THROUGH THE WITNESS'S OWN WORDS WHAT HE ACTUALLY SAID.

03:05PM 25 THE COURT: ISN'T THAT THE PROBLEM, THOUGH,

03:05PM 1 MR. COOPERSMITH? WE DON'T KNOW IF THESE ARE HIS OWN WORDS
03:05PM 2 BECAUSE HE DID NOT ATTRIBUTE THIS TO HIMSELF.

03:05PM 3 SO THAT'S, THAT'S THE ISSUE.

03:05PM 4 IF HE HAD SAID, OH, I REMEMBER WRITING THAT?

03:05PM 5 NO PROBLEM. WE WOULDN'T HAVE THIS DISCUSSION.

03:05PM 6 BUT THERE'S A DISPUTE ABOUT HIM BEING THE AUTHOR OF THIS.

03:05PM 7 MR. COOPERSMITH: RIGHT. SO NOW WE'RE BACK INTO THE
03:05PM 8 AUTHENTICATION WORLD, RIGHT?

03:05PM 9 BECAUSE IF IT'S -- IF THAT'S THE QUESTION, THAT'S AN
03:05PM 10 AUTHENTICATION ISSUE, RIGHT? BECAUSE YOU'RE RIGHT, HE
03:06PM 11 TESTIFIED THAT HE NEVER SAW THIS BEFORE.

03:06PM 12 AND THEN HE HEDGED A LITTLE BIT AT THE END AND HE SAID HE
03:06PM 13 WOULD HAVE TO REVIEW IT, BUT HE'S NOT SURE ONE WAY OR THE
03:06PM 14 OTHER, RIGHT? SO HE DOESN'T HAVE A MEMORY OF IT, RIGHT?

03:06PM 15 SO IN TERMS OF -- IF OUR GOAL WAS TO AUTHENTICATE THE
03:06PM 16 ATTACHMENT WITH HIS TESTIMONY, I AGREE THAT THAT WOULD FAIL FOR
03:06PM 17 THIS WITNESS BECAUSE HE DIDN'T SAY THAT, YES, I WROTE THIS,
03:06PM 18 AND, YES, I REMEMBER THIS, RIGHT?

03:06PM 19 BUT THERE ARE OTHER WAYS TO AUTHENTICATE A DOCUMENT INTO
03:06PM 20 EVIDENCE OTHER THAN JUST THE WITNESS SAYING THAT HE REMEMBERS
03:06PM 21 IT.

03:06PM 22 IN THIS CASE THE AUTHENTICATION FACTORS ARE THAT IT'S
03:06PM 23 MENTIONED, THERE'S A DOCUMENT MENTIONED IN THE ATTACHMENT
03:06PM 24 CALLED TRANSITION MWP, A WORD DOCUMENT; THERE'S AN EMAIL THAT I
03:06PM 25 THINK WE'RE ALL NOW AGREEING SHOULD COME INTO EVIDENCE, IT SAYS

03:06PM 1 THE TRANSITION REPORT IS ATTACHED; AND THEN WHEN YOU LOOK THE
03:06PM 2 GOVERNMENT PRODUCED -- THEY PRODUCED THESE DOCUMENTS TO US,
03:06PM 3 RIGHT? -- WITH SEQUENTIAL BATES NUMBERS STARTING FROM THE ONE
03:07PM 4 THAT ENDS WITH 20 THROUGH 21 AND THEN GOING TO THE END OF THE
03:07PM 5 DOCUMENT. SO I THINK IT COMES INTO EVIDENCE AS AUTHENTIC FOR
03:07PM 6 THOSE REASONS.

03:07PM 7 NOW, I AGREE WITH THE COURT, WHEN THE DOCUMENT IS ON THE
03:07PM 8 SCREEN AND IN FRONT OF THE JURY AND IN FRONT OF THE WITNESS,
03:07PM 9 AND IF THE WITNESS STILL WANTS TO SAY I NEVER WROTE THIS AND I
03:07PM 10 NEVER SAW THIS BEFORE, HE'S CERTAINLY FREE TO DO THAT, BUT
03:07PM 11 THAT'S DIFFERENT FROM WHETHER IT SHOULD COME INTO EVIDENCE.

03:07PM 12 AND I THINK ALL OF THE FEATURES HERE ARE PRESENT FOR THIS
03:07PM 13 DOCUMENT TO BE AUTHENTICATED. AND AS I SAID, THE GOVERNMENT IS
03:07PM 14 THE PARTY THAT BROUGHT UP WHY HE LEFT, AND I THINK WE'RE
03:07PM 15 ENTITLED TO SHOW THE OTHER SIDE OF THE STORY WHY HE MAY HAVE
03:07PM 16 LEFT AND WHAT HE SAID WHEN HE LEFT. HE IS HERE.

03:07PM 17 THE COURT: IF HE DID WRITE IT.

03:07PM 18 MR. COOPERSMITH: HE CAN DENY IT, BUT I THINK WE ARE
03:07PM 19 STILL --

03:07PM 20 THE COURT: I THINK HE ALREADY HAS. THAT'S PART OF
03:07PM 21 THE PROBLEM. HE HAS NOT CLAIMED OWNERSHIP OF THIS.

03:07PM 22 YOUR COLLEAGUE GAVE HIM AN OPPORTUNITY TO DO THAT, AND
03:07PM 23 THEN HE REPEATED THE QUESTIONS AGAIN AND AGAIN AND AGAIN.

03:07PM 24 AND WE KNOW WHAT WITNESSES DO AFTER ANSWERING THE QUESTION
03:07PM 25 SEVERAL TIMES, THEY'LL YIELD, OKAY, YEAH, IT'S POSSIBLE, MAYBE

03:08PM 1 I DID, MAYBE I DIDN'T, I DON'T KNOW. ALL THINGS ARE POSSIBLE,
03:08PM 2 OF COURSE.

03:08PM 3 MR. COOPERSMITH: WELL --

03:08PM 4 THE COURT: SO I TAKE YOUR POINT.

03:08PM 5 I STILL HAVE SOME PROBLEMS. IF THERE WERE NO STIPULATION,
03:08PM 6 I THINK YOU WOULD AGREE, THERE WOULD BE A REAL DIFFICULTY
03:08PM 7 GETTING THIS IN. THERE'S NO FROM ON HERE. WE DON'T KNOW WHO
03:08PM 8 SENT THIS. IT SAYS MARK.

03:08PM 9 THE RELIABILITY OF THIS IS THAT YOU'RE RELYING ON THE
03:08PM 10 BATES STAMPS AND THEY'RE SEQUENTIAL, AND THAT'S HOW THEY WERE
03:08PM 11 PROVIDED.

03:08PM 12 THE STIPULATION DOES NOT PROVIDE FOR APPENDICES, IT
03:08PM 13 PROVIDES FOR THE EMAILS, AND I UNDERSTAND YOUR FRUSTRATION.
03:08PM 14 AND THE EMAIL IS SOMEWHAT AMBIGUOUS, BUT THE EMAIL REALLY ISN'T
03:08PM 15 THE IMPORT. THE IMPORT IS A MEMO THAT IS ATTACHED TO IT.

03:08PM 16 IT HAS M.W. PANDORI ON IT.

03:08PM 17 WHAT WAS TELLING WAS THAT WHEN THIS WAS FIRST SHOWN TO THE
03:08PM 18 WITNESS, HE LOOKED AT IT AND HE DISOWNED IT IMMEDIATELY. IT
03:08PM 19 HAS MY NAME, BUT I DIDN'T DO THIS.

03:08PM 20 AND THEN WITH THE EXAMINATION -- AND THAT'S WHAT HAPPENS,
03:08PM 21 MAYBE HIS MEMORY IS REFRESHED, MAYBE HE WAS REMINDED THAT ALL
03:09PM 22 THINGS WERE POSSIBLE, EVEN TRIALS COMING IN UNDER THEIR TIME
03:09PM 23 LIMIT THAT WE'VE SCHEDULED, SOMETIMES THAT HAPPENS.

03:09PM 24 SO, YOU KNOW, ALL THINGS ARE POSSIBLE.

03:09PM 25 SO -- THAT'S HOW HE LEFT.

03:09PM 1 I STILL HAVE SOME PROBLEMS WITH THIS, THOUGH, I HAVE TO
03:09PM 2 SAY.

03:09PM 3 MR. BOSTIC.

03:09PM 4 MR. BOSTIC: YOUR HONOR, JUST SO THE GOVERNMENT'S
03:09PM 5 POSITION IS CLEAR, I'M NOT DISPUTING THAT THE REST OF
03:09PM 6 EXHIBIT 20279 WAS THE ATTACHMENT TO THIS EMAIL AND PURSUANT TO
03:09PM 7 THE STIPULATION I AGREE THAT IT WAS STORED, COLLECTED, AND
03:09PM 8 PRODUCED BY THERANOS.

03:09PM 9 SO IT'S NOT -- THAT'S NOT THE NATURE OF THE AUTHENTICATION
03:09PM 10 OBJECTION.

03:09PM 11 I THINK, THOUGH, THAT COUNSEL IS ASSUMING THAT ONCE THE
03:09PM 12 AUTHENTICATION HURDLE HAS BEEN CLEARED, THAT THERE'S NO BARRIER
03:09PM 13 TO ADMISSIBILITY, AND THAT'S NOT THE CASE.

03:09PM 14 THE STIPULATION SAYS THAT DOCUMENTS THAT QUALIFY ARE
03:09PM 15 ADMISSIBLE OVER ANY OBJECTIONS AS TO AUTHENTICITY OR BEST
03:10PM 16 EVIDENCE, SO ASSUMING THAT THIS IS ALL AUTHENTICATED, AND
03:10PM 17 ASSUMING THAT THAT DOES APPLY TO THE ATTACHMENT, AND THAT THE
03:10PM 18 ATTACHMENT ITSELF IS ALSO AUTHENTICATED.

03:10PM 19 THE PROBLEM IS THAT WITHOUT THE WITNESS OR SOME EVIDENCE
03:10PM 20 CONFIRMING THAT THIS MEMO IS FROM HIM, IT'S NOT RELEVANT FOR
03:10PM 21 THE PROPOSITION THAT THE DEFENSE SEEKS TO ADMIT IT FOR, WHICH
03:10PM 22 IS TO SHOW THE WITNESS'S STATE OF MIND. I'M SORRY IF I
03:10PM 23 MISSPOKE AND SAID DEFENDANT.

03:10PM 24 UNLESS THERE'S SOME EVIDENCE SHOWING THAT THE WITNESS
03:10PM 25 ACTUALLY WROTE THIS, THEN IT CAN'T COME IN UNDER 401 FOR HIS

03:10PM 1 STATE OF MIND AND WHAT WAS IMPORTANT FOR HIM, AND THAT'S STILL
03:10PM 2 SEPARATE FROM THE ISSUE OF THE FACT THAT THIS IS AN
03:10PM 3 OUT-OF-COURT STATEMENT THAT HASN'T BEEN ADOPTED OR OWNED BY A
03:10PM 4 WITNESS ON THE STAND.

03:10PM 5 THE COURT: WELL, THAT'S WHAT I WAS TALKING ABOUT.

03:10PM 6 WHEN I SAID AUTHENTICATION, PERHAPS THAT WAS A SYNONYM FOR
03:10PM 7 ATTRIBUTION. HE HASN'T. HE'S DISOWNED IT, SO HOW CAN IT COME
03:11PM 8 IN?

03:11PM 9 MR. COOPERSMITH: I UNDERSTAND THE QUESTION,
03:11PM 10 YOUR HONOR.

03:11PM 11 SO THERE MAY BE A LOT OF EXHIBITS. JUST LET'S SAY
03:11PM 12 HYPOTHETICALLY THERE'S AN EXHIBIT THAT COMES IN OR IS BEING
03:11PM 13 OFFERED AND IT'S AN EMAIL, AND IT HAS THE BATES NUMBER, AND IT
03:11PM 14 DULY HAS THE RIGHT EMAIL ADDRESSES, AND THE WITNESS JUST SAYS I
03:11PM 15 JUST DON'T REMEMBER THIS, I'M SORRY.

03:11PM 16 WELL, FIRST OF ALL, IT'S AUTHENTIC, RIGHT? AND AFTER THAT
03:11PM 17 IT COMES IN FOR THE PURPOSE IT COMES IN FOR.

03:11PM 18 SO I DON'T THINK THE FACT THAT THIS WITNESS IS -- AND
03:11PM 19 AGAIN, HE HEDGED AT THE END, BUT THE FACT THAT THIS WITNESS
03:11PM 20 SAYS I DON'T HAVE A DISTINCT MEMORY, I DON'T HAVE A MEMORY OF
03:11PM 21 THIS DOCUMENT DOESN'T REALLY MATTER.

03:11PM 22 SO, FOR EXAMPLE, YOUR HONOR, LET'S SAY THAT WE WERE IN OUR
03:11PM 23 CASE AND WE WANTED TO CALL A CUSTODIAN OF RECORDS WHO WOULD
03:11PM 24 SAY, YEP, THIS CAME FROM THE THERANOS EMAIL SERVER, AND IT WAS
03:11PM 25 PRODUCED TO THE UNITED STATES GOVERNMENT, AND THEN IT WAS

03:11PM 1 DUTIFULLY PRODUCED TO THE DEFENDANTS IN DISCOVERY.

03:11PM 2 I THINK -- AT THAT POINT I THINK IT COMES IN.

03:11PM 3 AND AGAIN, THAT'S A DIFFERENT QUESTION FROM WHETHER THE
03:12PM 4 WITNESS IS FREE TO DENY OR SAY HE DOESN'T REMEMBER IT, BUT
03:12PM 5 WE'RE ALLOWED TO GO THROUGH THE DOCUMENT WITH THE WITNESS, WITH
03:12PM 6 IT PUBLISHED TO THE JURY, AND SAY, SIR, YOU WROTE THESE WORDS,
03:12PM 7 AND GO SENTENCE BY SENTENCE AS NECESSARY.

03:12PM 8 THE COURT: WHAT IS THE RELEVANCE OF THIS DOCUMENT,
03:12PM 9 THE MEMO?

03:12PM 10 MR. COOPERSMITH: WELL, AGAIN, YOUR HONOR, THIS IS
03:12PM 11 HIS EXIT MEMO. WE CALL IT THE TRANSITION MEMO, WHERE HE'S
03:12PM 12 SAYING ALL OF THE THINGS THAT HE WANTS TO PASS ON TO
03:12PM 13 DR. ROSENDORFF AS HE'S LEAVING THE COMPANY AFTER HE QUILTS.

03:12PM 14 AND THE GOVERNMENT, OF COURSE, THIS WAS A MAJOR PART OF
03:12PM 15 THEIR DIRECT EXAMINATION OF DR. PANDORI, THAT DR. PANDORI LEFT
03:12PM 16 FOR A CERTAIN REASON AND THE REASON IS THAT HE HAD A
03:12PM 17 CONVERSATION WITH MR. BALWANI AND MS. HOLMES, AND DR. PANDORI
03:12PM 18 CLAIMS THAT --

03:12PM 19 THE COURT: PARDON ME FOR INTERRUPTING.

03:12PM 20 SO THIS IS A DOCUMENT THAT PURPORTS TO BE AN EXIT MEMO?
03:12PM 21 HE'S TOLD US HE DIDN'T WRITE IT.

03:12PM 22 MR. COOPERSMITH: RIGHT.

03:12PM 23 THE COURT: SO IT PURPORTS TO BE AN EXIT MEMO.
03:13PM 24 THAT'S REALLY WHAT THE BASIS OF THIS IS, RIGHT? THERE IS A
03:13PM 25 DOCUMENT HERE. IT LOOKS LIKE IT'S AN EXIT MEMO. DID YOU WRITE

03:13PM 1 THIS?

03:13PM 2 MR. COOPERSMITH: HE SAYS HE DOESN'T REMEMBER.

03:13PM 3 THE COURT: AND HE SAYS -- WELL, FIRST HE SAID NO.

03:13PM 4 AND THEN HE SAID I'VE NEVER SEEN THIS BEFORE, OR MAYBE HE
03:13PM 5 SAID THOSE THINGS CONTEMPORANEOUSLY.

03:13PM 6 AND THEN TOWARDS THE END OF YOUR COLLEAGUE'S EXAMINATION

03:13PM 7 TODAY HE SAID, WELL -- WHEN SAID, WELL, YOU DON'T REMEMBER?

03:13PM 8 THAT MEANS YOU COULD HAVE WRITTEN IT, MAYBE YOU DID, MAYBE YOU
03:13PM 9 DIDN'T, YOU JUST DON'T REMEMBER? HE AGREED WITH THAT

03:13PM 10 ASSESSMENT.

03:13PM 11 MR. COOPERSMITH: RIGHT.

03:13PM 12 THE COURT: SO IT COMES IN AS NOT HIS DOCUMENT, BUT
03:13PM 13 AS A DOCUMENT THAT WAS ATTACHED TO AN EMAIL.

03:13PM 14 MR. COOPERSMITH: YES, YOUR HONOR. IT COMES IN AS A
03:13PM 15 DOCUMENT THAT IS DULY PRODUCED FROM THERANOS TO THE GOVERNMENT
03:13PM 16 WITH APPROPRIATE BATES NUMBERS WITH A COVER EMAIL THAT PURPORTS
03:13PM 17 TO BE FROM DR. PANDORI, AND IT COMES IN AS AN EXIT MEMO FROM A
03:13PM 18 GUY NAMED DR. PANDORI WHO --

03:13PM 19 THE COURT: WELL, IT COMES IN FOR WHAT IT SAYS.

03:14PM 20 WHETHER OR NOT HE WROTE IT OR NOT IS STILL AT ISSUE.

03:14PM 21 MR. COOPERSMITH: WELL, IT COMES IN FOR WHAT IT
03:14PM 22 SAYS, AND ALSO THAT IT IS FROM A PERSON NAMED MARK PANDORI, AND
03:14PM 23 THAT IT WAS RECEIVED --

03:14PM 24 THE COURT: WELL, WE DON'T KNOW THAT, DO WE?

03:14PM 25 MR. COOPERSMITH: WELL, WE DO KNOW THAT.

03:14PM 1 THE COURT: WHO WROTE IT? WHO WROTE IT? WE DON'T
03:14PM 2 KNOW WHO WROTE IT.

03:14PM 3 MR. COOPERSMITH: WELL, WE KNOW WHO RECEIVED IT.

03:14PM 4 THE COURT: WE KNOW WHO RECEIVED IT, RIGHT.

03:14PM 5 WE DON'T KNOW IF JOE SMITH WROTE IT AND THEN PUT DOWN
03:14PM 6 MARK PANDORI, DO WE?

03:14PM 7 MR. COOPERSMITH: WELL, I DON'T THINK THAT'S
03:14PM 8 POSSIBLE, YOUR HONOR.

03:14PM 9 THE COURT: YOUR COLLEAGUE WOULD DISAGREE WITH YOU.
03:14PM 10 HE WOULD TELL YOU ALL THINGS ARE POSSIBLE.

03:14PM 11 MR. COOPERSMITH: WELL, MAYBE SO, YOUR HONOR.

03:14PM 12 HERE'S THE BOTTOM LINE, BECAUSE I THINK EVERYONE
03:14PM 13 UNDERSTANDS THE POSITION --

03:14PM 14 THE COURT: YES, WE DO. WE DO.

03:14PM 15 MR. COOPERSMITH: SO IF THIS IS NOT GOING TO COME IN
03:14PM 16 THROUGH DR. PANDORI, AND OBVIOUSLY OUR POSITION IS THAT WE
03:14PM 17 SUBMIT IT SHOULD.

03:14PM 18 THE COURT: UNDERSTOOD. UNDERSTOOD.

03:14PM 19 MR. COOPERSMITH: THEN WHAT WE'RE GOING TO BE ASKING
03:14PM 20 FOR, AND WE'LL HAVE TO DO THIS, I GUESS, WHAT WE'LL CALL IT THE
03:14PM 21 HARD WAY, RIGHT, WHERE WE'RE GOING TO MAKE SURE THAT WE HAVE A
03:14PM 22 PARALEGAL LINED UP FROM THE UNITED STATES ATTORNEY'S OFFICE WHO
03:15PM 23 CAN TESTIFY ABOUT WHAT THEY RECEIVED FROM THERANOS AND WHAT
03:15PM 24 THEY'VE PRODUCED, AND WE CAN GO THROUGH THAT TO MAKE SURE --

03:15PM 25 THE COURT: OKAY. SO DON'T THREATEN ME WITH WHAT

03:15PM 1 WE'RE GOING TO HAVE TO DO. PLEASE DON'T DO THAT. YOU'RE
03:15PM 2 BETTER THAN THAT. YOU ARE. YOU ARE BETTER THAN THAT.

03:15PM 3 MR. COOPERSMITH: I WASN'T MEANING IT THAT WAY.

03:15PM 4 THE COURT: COME ON. YOU DON'T HAVE TO DO THAT.

03:15PM 5 ALL RIGHT. ANYTHING FURTHER ON THIS?

03:15PM 6 MR. BOSTIC: I'M SORRY, YOUR HONOR.

03:15PM 7 JUST TO CLARIFY THE GOVERNMENT'S POSITION IN RESPONSE TO
03:15PM 8 THAT, I DON'T THINK THAT THE APPROACH THAT MR. COOPERSMITH JUST
03:15PM 9 OUTLINED WOULD SOLVE THE PROBLEMS WITH THIS DOCUMENT.

03:15PM 10 PROVING THAT IT WAS STORED BY THERANOS AND PRODUCED BY
03:15PM 11 THERANOS DOES NOT SOLVE THE RELEVANCE PROBLEMS OR THE HEARSAY
03:15PM 12 PROBLEMS WHERE WE HAVE A WITNESS WHO WON'T TELL US THAT HE'S
03:15PM 13 THE ONE WHO WROTE IT, WHERE WE DON'T KNOW WHO WROTE THIS
03:15PM 14 DOCUMENT.

03:15PM 15 THAT'S ALL.

03:15PM 16 THE COURT: OKAY. GREAT. ALL RIGHT. THANK YOU.

03:15PM 17 WELL, THIS WITNESS ISN'T DUE TO COME BACK UNTIL WEDNESDAY.
03:15PM 18 HE'S IRONICALLY DOING A CLIA INSPECTION OF HIS OWN, ISN'T HE?
03:15PM 19 PERHAPS WE'LL ASK HIM HOW THAT WENT.

03:15PM 20 THANK YOU VERY MUCH. I'M GOING TO LOOK AT THE TRANSCRIPT,
03:16PM 21 AND WE'LL ALL STEW ON THIS.

03:16PM 22 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

03:16PM 23 THE COURT: SO WE'LL HAVE ANOTHER WITNESS TUESDAY?

03:16PM 24 MR. BOSTIC: YES, YOUR HONOR.

03:16PM 25 THE COURT: AND YOU'RE PRETTY CONFIDENT THAT WE CAN

03:16PM 1 FINISH THAT WITNESS?

03:16PM 2 MR. BOSTIC: I BELIEVE SO. WE'LL CONFER WITH THE

03:16PM 3 DEFENSE ON THAT, BUT WE HAVE EVERY REASON TO THINK SO.

03:16PM 4 THE COURT: OKAY.

03:16PM 5 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

03:16PM 6 THE COURT: ANYTHING FURTHER?

03:16PM 7 MR. COOPERSMITH: NO. WE APPRECIATE IT, YOUR HONOR.

03:16PM 8 THE COURT: ALL RIGHT. HAVE A GOOD WEEKEND. THANK

03:16PM 9 YOU.

03:16PM 10 (COURT CONCLUDED AT 3:16 P.M.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

DATED: APRIL 1, 2022